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A
D I G E S T

Of so much of the LAW respecting

Borough Elections,

AS CONCERN'S

CITIES AND BOROUGHES IN GENERAL,

THEIR REPRESENTATION, AND RETURNING OFFICERS;

The Carriage and Delivery of the WRIT;

The History, Form, Conveyance, and Delivery of the
PRECEPT;

The Duty of the RETURNING OFFICER, previous to the
ELECTION;

The Form and Effect of
DECISIONS and LAST DETERMINATIONS;

The Right of ELECTORS for Boroughs in general,

And of BURGAGE TENANTS, FREEHOLDERS, LEASE-
HOLDERS, and COPYHOLDERS in particular.

By SAMUEL HEYWOOD,
SERJEANT AT LAW.

L O N D O N :

PRINTED FOR J. JOHNSON, N^o 72, ST. PAUL'S CHURCH-YARD;
AND J. BUTTERWORTH, IN FLEET-STREET.

1797.



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THE favourable reception of my former labours has induced me to resume my original intention of publishing a *general Digest of Election Law*. The *Digest of the Law respecting County Elections* may now be considered as the *first volume* of the general work, and as such is referred to in this publication. This part of the *Digest of the Law respecting Borough Elections* has been framed, as nearly as the nature of the subject will permit, on the same plan.

The portion now published contains some general observations on cities and boroughs, and their returning officers; and then traces the writ through the hands of the messenger attending the great seal, to those of the high-sheriff of the county, and the precept from the high-sheriff to its delivery to the returning officer, and points out his duty preparatory to the election. The former volume did not take up the subject till after the delivery of the writ to the high-sheriff; the chapter on the *carriage and delivery* of it being omitted, from an unfounded apprehension of swelling that volume to an immoderate bulk; but it is inserted here.

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The voters for boroughs cannot, like those for counties, be included under any one general description; it consequently becomes necessary to arrange them into separate classes. It has been found convenient to divide them into three, viz. those who claim to vote in right, first, of *tenure* secondly, of *residency*, or thirdly, as *members of a corporate body*. In this volume the right of voting by tenure is treated of, and the different claims of burgage tenants, leaseholders, and copyholders, discussed, preceded by a chapter on the rights of electors in general, and the law concerning the last determinations of the House of select committees.

For the publication of the remainder of this work no time can now be fixed; but the design to complete it is not abandoned. Avocations of another kind leave me only uncertain intervals of leisure for prosecuting researches into the law and constitution of parliament; and it requires no common degree of attention to reduce into order materials collected at different times, during the lapse of several years, and to make all the separate parts of a work, written under such disadvantages, consistent with each other. I am not sure that I have always succeeded in these respects. The labour of referring to the numerous cases which must be cited from the Journals, and the difficulty of framing from the undigested material

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materials often found there; a regular report of each case, will be best understood by those gentlemen who have been in the habit of making similar references. And I cannot boast of such a share of resolution, as to be able to persist, without respite, in the disgusting task of attempting to reconcile absurd and contradictory decisions, and in the repetition of often fruitless efforts to reduce to first principles a very important branch of the law, which ignorance, caprice, and corruption have united to render intricate and confused.

I disclaim having taken any commentator for my guide, but have entered upon the investigation of these topics with a resolution to examine and judge for myself. I have ventured sometimes to give my own sentiments, leaving my readers at liberty to adopt or reject them, as they think fit, but to enable them to form an opinion, the authorities on both sides are generally given upon disputed points, and *in all cases* they may rely on the fidelity of the citations.

Many of the subjects here discussed are of a popular nature, and have been, at some periods of our history, interwoven with the politics of the country. In support of their respective opinions, antiquarians and historians have contended with all the heat and virulence of party zeal. As party questions they have long ceased to agitate the public, but they are so intimately connected

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nected and blended with the history of our constitution and government, that they must ever be highly interesting.

For the copy of the curious Information filed against Billinghamst, placed in the *Addenda*, I am indebted to the kind attention of Messrs. Dealtry and H. Barlow, of the Crown-office.

Inner Temple,

Feb. 25th, 1797.

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CHAP. I.

OF CITIES AND BOROUGHES IN GENERAL, AND
OF CITIES AND BOROUGHES BEING COUNTIES
OF THEMSELVES.

SPELMAN, in his Glossary, has shewn that the word "burg," was sometimes used for "a fortified place;" and Somner, in his Saxon Dictionary, derives it from the Saxon word "beorgan," *in tutum recipere, servare*, and supposes, that in its original signification it meant "a place of safety." In this extensive sense it was equally applicable to every district, in which provision was made for the security of its inhabitants, whether by castles and fortifications, or regulations of police. Thus the denomination of "friburghs" was anciently applied to the *decennæ* or tythings, as communities of freemen combined together for their mutual preservation and safety. The principal person in

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the tything was called the "borsholder," or commander of the burg, and the violation of the pledge given there, "burghbrech." Anciently, cities were classed with burghs, and their inhabitants, or rather the tenants of houses, or land within them, were sometimes known by the name of burgware men, and burgeffes.

The security experienced by the tenants of the king and greater barons, in the vicinity of their fortified towns and castles, naturally brought together a concourse of people. In these places husbandmen could conveniently lodge their crops, and tradesmen their wares; it was in them persons could meet together, without danger, to buy and sell, and artificers pursue their labours without interruption. In this manner castles and fortifications became the asylums of commerce; and among the laws of William the Conqueror is one, which prohibits the holding of fairs and markets in any places but cities, "*et in burgis clausis, et muris vallatis, & castellis, & locis tutissimis;*" (a) but after the conquest, this law was frequently

Ll. Gul.
Conq. 6r.
Wilk. pa.
229.

(a) *Item nullum mercatum vel forum fit nec fieri permittatur, nisi in civitatibus regni nostri, & in burgis clausis et muro vallatis, & castellis & locis tutissimis, ubi consuetudines regni nostri & jus nostrum commune, & dignitates coronæ nostræ quæ constitutæ sunt a bonis prædecessoribus nostris deperire non possint,*
nec

Of Cities and Boroughs in general.

3

frequently dispensed with, and the privilege of holding fairs and markets extended to unfortified places. The avarice of our monarchs was further gratified by the increased rent they received for extending these grants to exemptions from all tolls and impositions on the transport through, or sale of goods in any part of the kingdom. This arbitrary exercise of prerogative met with less opposition than might have been expected from the barons; but their interest induced them to imitate, rather than oppose, these usurpations, and the inhabitants of the more ancient boroughs were obliged to submit quietly to the diminution of their accustomed profits, which these exemptions necessarily occasioned.

Boroughs,
origin of?

Having premised these few general observations, we shall confine ourselves, for the remainder of this chapter, to enquiries more immediately connected with parliamentary representation; for whatever may have been their origin, those districts only are now denominated "boroughs," which send one or more representatives

nec defraudari nec violari, sed omnia rite, & per judicium & justitiam fieri debent. Et ideo castella, & burgi, & civitates sunt & fundatæ & ædificatæ, scilicet, ad tuitionem gentium & populorum regni, & ad defensionem regni, & idcirco observari debent cum omni libertate & integritate & ratione.

Boroughs,
origin of.

to parliament. A "city" is only one of the more considerable boroughs, honoured with a charter of incorporation, and by being a bishop's see. Westminster forms an exception, and retains the name though it never was incorporated, and has ceased to be a bishop's see.

Boroughs,
how made.

The privilege of sending representatives to parliament is claimed by the cities and boroughs of England and Wales, either, 1. by prescription, as having been enjoyed from time immemorial, which is fixed to commence from the reign of Richard the 1st;—2. by charter;—3. by writ of summons;—or, 4. by act of parliament.

Boroughs by
prescription.

I. This prescriptive right, like all others, is presumed, from long enjoyment, to have for its origin whatever might be necessary legally to confer it, as charters or acts of parliament now lost; but it may generally be traced to particular tenures, and boast a higher origin. The main object of the feudal system was, to have a military force always in readiness for the defence of the kingdom; but the king's tenants in ancient demesne were excepted, and when an advanced state of civilization made it necessary, a tenure was invented for persons engaged in commerce,

which

which also dispensed with their personal attendance in the field, and at the ordinary courts of justice.

Boroughs by
prescription.

It is generally understood, that lands in ancient demesne were such as had been reserved to the king for the maintenance of his household and garrisons, and all lands which appear by Doomsday-Book to have belonged to the king in the time of *Edward the Confessor*, or *William the Conqueror*, are presumed to have been of this description, though they came afterwards into the hands of subjects. Such services only were exacted from these tenants as did not call them far from home. Hence it was a necessary part of this domestic system, that every district held in ancient demesne should have a court within itself, and that the tenants should not be impleaded in, or owe suit to, any other. Moreover, they were exempted from payment of tolls in fairs and markets for all things concerning husbandry and sustenance, from paying to the expences of knights of the shire, and from all taxes and tallages laid on by parliament, unless specially named. As their attendance at the court of their own manor was the strongest mark of distinction, they were called *socmen*, i. e. suitors to the court, and said to hold in *socage*. The rent due to the king or their lords was originally paid in kind, but in process of time was commuted for by a payment of money,

6
Boroughs by
prescription.

Of Cities and Boroughs in general.

ney, of which many instances may be found in
Doomsday-Book.

Similar privileges were held out to induce
persons to set themselves apart for the pursuit
of trade, and places of security taken from
the jurisdiction of the sheriffs, and placed
more immediately under the protection of the
king, or some of the greater barons, to whom
he delegated authority. The district was deno-
minated a burg, the houses erected burgages,
and the inhabitants burgesses, *i. e.* holders or
burgages. A court was erected within the dis-
trict, to which the tenants did suit, and of which
the lord received the profits. From their at-
tendance on the borough court they also were
called *socmen*, and their tenure *socage*. They
were exempted from military, and frequently
also from all other services, except the payment
of annual rents in money for their burgage
houses. In the earlier times, after the Norman
conquest, it was not uncommon for the king to
grant to some of these tenants individually ex-
emptions from the payment of tolls and other
duties in markets, and fairs, and ports; but af-
terwards it became usual to create the borough
itself a "free borough," (*liber burgus*) and
thereby exempt at once all those who held bur-
gage houses within it. They were also privi-
leged, as well as the tenants in ancient demesne,
from being taxed or tallaged in parliament, and

§

from

Of Cities and Boroughs in general.

from contributing towards the wages of the county members.

7
Boroughs by
prescription.

It would not be difficult to make out from Doomſday-Book a liſt of the places formerly denominated boroughs; though Brady has given us a very imperfect one, containing only thirty in England and one in Wales (*a*). Beſides them there are in almoſt every county “*burgeſſes*,” (*burgeſes*) whom I take to be perſons holding

(*a*) The following are all he has ſelected, *viz.*

Yarmouth	Romeney
Thetford	Huntingdon
Dunwich	Stafford
Norwich	* Tutberie Caſtle
5 Exeter	20 Bath
Barnſtadle	Taunton
Lideford	Southampton
Walingford	Lewes
* Iſpwich	* Pevenſea
40 Eye	25 Chicheſter
Buckingham	Arundel
Northampton	Warwick
Hertford	* Coleſhill
York	Tamworth
75 Canterbury	30 Cricklade

In Wales.

* Roelent

The boroughs of Totneſs, Lincoln, Stamford, and others, mentioned in Doomſday-Book, are omitted.

Thoſe marked thus * do not now ſend members to Parliament.

Boroughs by
prescription.

Madox Fir-
ma Burgi,
p. 11, 15.

Doomsd.
p. 108 b.

Madox Fir-
ma Burgi,
p. 18.

the land mentioned opposite their names by bur-
gage tenure. The incidents of that tenure will
be discussed hereafter.

All the cities and boroughs of England were
originally the property of the crown, or clergy,
or some of the more powerful barons. A city
or borough belonging to the king was some-
times called, indifferently, *civitas regis*, *villa*
regis, or *burgus regis*, and its tenants *homines*,
or *burgenses*, *regis*.

The profits arising from them being un-
certain and difficult to collect, the king
frequently let them out at certain fixed
rents. Sometimes they were let out to the
barons, as, *Judbel tenet de rege Totenais burgum*,
quod rex Edwardus in dominio tenebat. Ibi sunt
intra, 100 burgenses, 5 minus, & 15 extra bur-
gum terram laborantes. Inter omnes reddunt 8 lib.
ad numerum. Olim reddebant 3 lib. ad pensum et
arsuram. And there are also numerous instances
of cities and boroughs granted to farm to the
citizens or burghesses, or to some of them only,
in fee, for term of years, or at the king's plea-
sure. It is obvious, that for the payment of the
rent reserved on these grants, the citizens or
burghesses must have been in fact incorporated,
to a certain degree at least, long before we have
any traces of charters of incorporation being in
use. Notwithstanding the payment of these rents,
the

the cities and boroughs might remain liable to be tallaged as before; thus, the city of Hereford paid a fee farm rent, and yet was tallaged in the second year of Henry the Third; and so of others. Many boroughs still continue to pay these fee-farm rents.

Boroughs by prescription.

Ib. p. 12, note (b).

Madox says, that when a town was put to fee-farm, not only the particular burgage tenements lying in the town, but the town itself, was held by burgage tenure; and he cites, as examples, London, York, and Winchecumbe (a). While the king had any of these towns in his own hands, his *præpositus*, or *custos*, leased and received his farm or issues; if he granted them out to the burgeses, the bailiffs or superior officers of the place received them. Sometimes the towns were in farm to the sheriff of the county, and were accounted for by him. Madox gives a minute detail of the profits which were derived from cities and boroughs to the lords

Ib. pa. 21.

(a) — *tenentur de domino rege in capite in liberum burgagium sicut & tota civitas Londonie.*—37 Edw. III.

— *de domino rege in liberum burgagium sicut tota civitas Londonie tenetur.*—18 Ric. II.

— *& unum cotagium—de domino rege in capite ut parcella civitatis prædictæ et prout tota illa civitas tenetur.* York, 18 Ric. II.

— *in capite in liberum burgagium per servitium reddendi quolibet anno 3d, ad festum, &c. per manus ballivi de Wynche-combe qui pro tempore fuerit.*—3 Hen. IV.

or

Boroughs by
prescription.

or their farmers; and in them the rents paid by the burgage tenants were sometimes included (*b*).

Among the prescriptive boroughs there are many, which have never been honoured either with charters of privileges or of incorporation; some, in which the common law officers, as the constables of the vill, or the steward or bailiff, make the returns; and others which are not even market towns. The single parish of Aldborough, in Yorkshire, contains two boroughs, Aldborough and Boroughbridge; and Steyning and Bramber together form only one

Rolls of Parl.
vol. 2. pa.
348.
A. 50. Ed. III.

(*b*) A. N'RE. S^r le Roi & son noble conseil prient ses citezeines & burgeyses de ses burghs Notyngham, Derby, Northampton, Bedeford, & la cite de Chichestre q come ils tiegnent les ditz burghs & cite de n're S^r le Roi au ferme, rendantz ent par an certainz fermes en l'Escheker n're S^r le Roi & plusours burgeyses des ditz burghs q tiegnent diverses burgages de n're dit S^r le Roi rendantz ent certaine rent q'est parcelle des mesmes les fermes, ont gastez les ditz burgagez, & les soeffrent giser frischez issint q les communes des ditz burghs ne puissent avenir a les dites rentes pur paier les fermes avant ditz en grant poverissement des ditz burghs, & arrierissement des paiementz des fermes avant ditz; Qe pleise a n're dit S^r le Roi ordeigner q'il puissent avoir recuverer des ditz burgages issint gastez en covenable manere come plerra a lui & a son conseil, en amendement & relevacion des ditz burghs, pur Dieu, & en eovere de charite, Et soit cella graunte a toutz cites & burghs n're S^r le Roi par toute Engleterre.

Soit ceste bille mieltz declarrez.

street.

street. (a) In all boroughs by prescription, it is highly probable that the right of voting was originally annexed to tenure, although, in the course of ages, it has in some of them been changed into a personal privilege.

Boroughs by
prescription.

II. It would be a very curious, and not unimportant pursuit, to trace the history of the incorporation of boroughs through all its changes, from its first rude origin to the present day; but the limits of this work do not permit the detail here. The earliest charter of incorporation now existing (if it can be called one) is, perhaps, that granted by William the Conqueror to the burgesses of London; but, as Brady justly observes, it is rather an instrument of protection than a charter; it is in Saxon, and has been thus translated into Latin.

Boroughs by
charter.

Willielmus rex salutat Willielmum episcopum, et Godfridum portegresum, & omnem burghware infra London. Franc. et Angl. amicabilem. Et vobis notum facio, quod ego volo, quod vos sitis omni lege illâ digni quâ fuistis Edwardi diebus regis. Et volo quod omnis puer sit patris sui hæres post

Ld. Lytt.
Hen. II. Ap-
pend. to 2d
book, No. 6.

(a) There is one borough, Tamworth, which is situated partly in Staffordshire, and partly in Warwickshire, and upon a vacancy during the session, the writ is directed to the sheriff of each county. 14 Journ. p. 63.

diem

Boroughs by
charter.

diem patris sui. Et ego nolo pati quod aliquis homo aliquam injuriam vobis inferat. Deus vos salvet.

The term, "*liber burgus*," was probably not used in the royal charters till some time after the Norman conquest; and the documents relating to the town of Great Yarmouth, preserved by Brady, explain it very satisfactorily. At the time of the conquest, Great Yarmouth was a *burgus regis*, and the king held it in his own hands till John, in the 9th year of his reign, farmed it out to the burghesses, at the yearly rent of £. 55, and granted a charter, constituting it a "free" borough, beginning in these words: *Johannes Dei gratia, &c. Sciatis nos concessisse & presenti carta nostra confirmasse burghensibus nostris de Gernemua quod habeant burgum de Gernemua ad feodi firmam in perpetuum, & quod burgus ille sit liber burgus imperpetuum, & habeant socam & facam, tol, & theam, & infangenethes, & utfangenethes, & quod ipsi burghenses per totam terram nostram, & per omnes portus maris sint quieti de theolonio, lestagio, passagio, paagio, pontagio, stallagio, & de leve & de denegeld, & omni alia consuetudine, salva libertate civitatis London, & quod nullam sectam comitatum vel hundredorum faciant de tenuris infra burgum de Gernemua.* The charter goes on to grant a *gilda mercatoria*, and other privileges.

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Boroughs by
charter.

The charter granted in the same year to those who shall be willing to take burgages at Liverpool, will tend to illustrate the charter just mentioned.

Jobēs. Dei gra. rex Anglie dus. Hibnie. dux Norm. Aquie. com. And. omnib. fidelib. suis qui burgagia apud villam de Lyrpul here voluit saltm. Sciatis qu concessimus omnibus fidelibus nostris qui burgagia apud Liverpool ceperint quod habeant omnes libertates & liberas consuetudines in villa de Liverpool quas aliquis liber burgus super mare habet in terra nostra & ideo vobis mandamus quod secure et in pace nostra illuc veneatis ad burgagia nostra recipienda & hospitanda & in cujus rei testimonium has literas nostras patentes vobis transmittimus. Teste Simone de Pateshill, apud Winton 28 die August. anno regni nostri nono.

But the charter of King Edward the 1st, by which Lyme was made a free borough, in the 12th year of his reign, proves, beyond all dispute, that a borough was denominated "free" merely from the privileges granted to its inhabitants in buying and selling, and carrying on trade.

"Rex omnibus ad quos, &c. salutem, Sciatis quod volumus & concessimus pro nobis & heredibus nostris, quod villa nostra de Lyme, in comitatu Dorset, de cetero liber burgus sit. Et quod homines ejusdem villæ liberi sint burghenses, ita quod gildam habeant mercatariam, cum omnibus ad hujusmodi gildam

2 Lud. p. 6.

Boroughs by
charter.

gildam spectantibus in burgo prædicto. Et alias libertates & liberas consuetudines per totum regnum & potestatem nostram quas burgensibus nostris de Melcumbe per cartam nostram nuper concessimus & quibus cives nostri de London per cartas progenitorum nostrorum quondam regum Angliæ de rebus & mercandis suis rationabiliter usi sunt hucusque sine occasione vel impedimento justiciariorum, vicecomitum, ballivorum, seu ministrorum nostrorum quorumcunque in perpetuum: Precipientes & firmiter injungentes pro nobis & heredibus nostris, ne quis ipsos in personis vel rebus suis contra libertates & liberas consuetudines prædictas gravet aut disturbet in aliquo vel molestat. In cujus," &c. T. R. apud Kaer in Arvon, 3 die Aprilis, 12 Edw. I.

It may be observed, that in these charters granted to Great Yarmouth and Lyme, mention is made of a *gilda mercatoria*, of which it will be necessary to give some explanation.

The word "Gild" originally meant the payment of money, and was generally applied among the Saxons, to those sums which were payable to the king or lord of the soil for taxes, rents, or services: instances will be found in the note below (a). Hence persons liable to the same payments

Doomsd.
p. 246.

(a) *Stafford — Probi de burgo habent 14 (mansuras); hi omnes habent sacham et socham. Rex habet de omnibus geldum per annum.*

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ments to a lord, were said to be in his gild (a). Of the origin and nature of gilds or fraternities, it is sufficient to observe, that they were probably at first only voluntary associations, entered into by the feudal lords, for mutual protection and security, and seem to have obtained over the greater part of Europe. Traders and others were induced to enter into similar associations, and the rapacity of their kings and lords, in the true spirit of the feudal system, levied fresh contributions in return for a more extended protection. It is probable that these gilds or fraternities were not unknown in England, prior to the conquest; for Madox has preserved the following entry, which shews that one at least, called the Cnighthenegeld, or Gild of Young Men, was not

Boroughs by
charter.

In burgo de Warwick habet rex in daco suo, 113 domos, et barones regis habent 112, de quibus omnibus rex habet geldum suum.

Doomsday,
p. 238.

In Gildeforde, habet rex Willielmus 75 pagas in quibus manent 175 homines, &c. de supradictis pagis habet Ranulf. cleric. 3 hagas ubi manent 6 hōes, et inde habet iidem Rann. sacam et focam, nisi commune geldum in villa venerit, unde null. evadat.

Ib. p. 30.

In burgo Huntedone, sunt 4 ferlingi. In duobus ferlingis T. R. E. fuerunt, et sunt modo, 116 burgenses consuetudines omnes et geldum regis reddentes, et sub eis sunt 100 bordarii, qui adjuvant eos ad persolutionem geldi. See also the next note.

(a) *Chenith. Terra archēpi Cantuarenfis. In civitate Cantuariā habet archieps 12 burgenses, et 32 mansuetas quas tenent clerici de villa in gildam suam et reddunt 35 sol.*

Ib. p. 3.

only

Boroughs by
charter.

only endowed with land, but enjoyed those privileges over its tenants, which were esteemed among the proudest marks of feudal superiority.

Firma Burgi.
p. 23. n. 1.

H. Rex Angl (orum) Ricardo Episcopo Londin(iæ), et vicecomitibus, et præposito, et omnibus baronibus, et fidelibus suis Francis et Anglis de Londonia et de Middlesexa, salutem. Sciatis me concessisse ecclesiæ et canonicis sanctæ Trinitatis Londiniæ socam de Anglica Cnithtenegilda, et terram quæ ei pertinet, infra burgum et extra, sicut homines ejusdem gildæ eis dederunt et concesserunt. Et volo (et) firmiter præcipio, quod bene et honeste et libere teneant, cum saca et soca et toll, et theang, et hinfangenetheof, et omnibus consuetudinibus suis, sicut homines prædictæ gildæ melius habuerunt tempore regis Eadwardi, et sicut rex Willelmus pater meus, et frater meus, eis concesserunt per brevia sua. Testibus, A. regina, et Gaufrido cancellario, et Gaufrido de Clintonia, et Willelmo de Clintonia apud Wodestocam.

It has been observed before, that it was not unusual for the king to grant the profits of a borough to his tenants, on the payment of a fee-farm rent; in like manner a certain annual payment to the king might be imposed on a gild, and its members be left to levy it as they could agree among themselves. I have found no instance of the burgesses or inhabitants of a borough being incorporated into a gild merchant before

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before the conquest, though in the following entry taken from Doomsday-Book, a guild hall is mentioned. *In Dovere sunt 29 mansuræ de quibus rex perdidit consuetudinem; de his habet Willielmus filius Goisfridi 3, in quibus erat giballa burgen-sium, et hi omnes de his domibus revocant epum. baioiensem ad protectorem et liberatorem.*

Boroughs by
charter.

Doomsday
Book, p. 1.

In the first year of king John he grants to his burgeses of Dunwich, *hansam et gildam mercatoriam sicut habere consueverint*. Whence it appears, that grants of this kind had been introduced before his time. King John granted a *gilda mercatoria* to the burgeses of several other boroughs; and in the reign of Henry the Third it seems to have been generally inserted in the royal charters. The privileges conveyed by these grants were probably held in high estimation; for there are numerous instances preserved, not only of individuals, but of towns, being amerced for having usurped them without the sanction of the crown.

Brady on
Boroughs,
App. p. 13.

Madox, Fir-
ma Burgi,
p. 26.

The introduction of these gilds merchant made an important alteration in the state of boroughs, and tended much to increase the power of the crown. The exemption from tolls, and other burdensome services and payments, was no longer annexed to the tenure of burgage estates, or other lands within a borough, but was turned

C

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Boroughs by
charter.

into personal privilege, vested in the members of each fraternity, emanating immediately from the crown itself. Afterwards charters in the modern form (*a*) were granted to particular persons, and sometimes to all the inhabitants of a district in general, creating them a body politic, giving them perpetual succession, and vesting in them various privileges and powers. Of the operation of this change we shall have occasion to treat in a subsequent chapter. But we have little reason to suppose that the right of voting was expressly granted by charter, till a much later period. Willis mentions the charter of Wenlock, granted (*anno* 1478) in the reign of Edward the IVth, as the earliest instance he had met with.

1 Not. Parl.
p. 42.

Cities and
boroughs
made coun-
ties.

The greater cities and boroughs were convenient barriers for the crown against the power and haughty spirit of the barons, and, on that account probably their representatives were originally introduced to a share in the legislature. In order to conciliate them, it became necessary for the

History of
Charles the
Fifth, p. 39.
301.

(*a*) Robertson says, that it was not till the beginning of the 12th century that charters for erecting corporations were common in France. Possibly the discovery of the pandects of the civil law at Amalfi, about 1130, might introduce them, or at least make them more common.

crown

crown to surrender its right to tallage them at pleasure, and in some instances they were wholly exempted from the ordinary jurisdiction of counties, and dignified with the privileges of separate counties of themselves. Of this description are the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lincoln, Litchfield, London, Norwich, Worcester, and York; and the boroughs of Berwick upon Tweed, Haverford West, Kingston upon Hull, Newcastle upon Tyne, Nottingham, Pool, and Southampton. To these, according to Prynne, should be added Northampton, but that appears to be a mistake; from him also we learn, that all in this list, except Exeter, Litchfield, Worcester, Berwick, Haverford West, Gloucester, and Poole, were made counties of themselves, prior to the 39th Henry the VIth. The circumstances peculiar to this description of cities and boroughs will be noticed hereafter in regular course under the general heads.

Boroughs by
charter.

Brev. Parl.
red. p. 295.

It must not be forgotten, that the greater barons assumed the power of granting charters of privileges and incorporation to their tenants, similar to those of the crown; and in several boroughs the right to elect members is still confined to the successors of such grantees.

Boroughs by
summons.

III. BY WRIT OF SUMMONS.

In the case of Ashby and White, Lord Holt said, that since the time of legal memory the king cannot grant the right of voting to inhabitants in general, not incorporated. But so many instances to the contrary may be produced, that this opinion is highly questionable. Westminster was never incorporated; and in 12 Edw. IV. the sheriff of Middlesex returned, that there was *no* city or borough within his bailiwick. Yet in 1539 it was made a bishop's see, and is supposed to have been first summoned to send members to parliament. Its earliest return extant is in the 1st of Edw. VIth. Mitchell and Newport, in Cornwall, began to send members in the same reign, and Callington in that of Elizabeth, and as none of them were incorporated, their right depended solely on the king's summons.

The cases of Minehead and Aylesbury are somewhat singular; for though they were incorporated by charters, which conferred the right of voting, yet the inhabitants have continued to return members after their corporations were dissolved.

Minehead was incorporated in the 1st year of queen Elizabeth, and then for the first time returned members. James the First dissolved the corporation for not keeping the port in repair, which

2. Dougl.
p. 298.

2 Carew
p. 233.

1. Lud. p. 98.

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which was the condition on which the charter had been granted; notwithstanding which this borough has been regularly summoned to send members ever since, and the inhabitants have continued to elect, without either prescription or charter in their favour.

Boroughs by
summons.

Aylesbury was formerly part of the ancient demesnes of the crown, and was first incorporated and privileged to send members by queen Mary. The corporation was to consist of a bailiff, ten aldermen, and twelve burgesses. This corporate body died away by degrees, and at last was totally dissolved. The burgesses appear to have elected the members down to the third year of Charles the 1st, (except when the lady and lord of the manor nominated, in the reign of queen Elizabeth) and the bailiff made the returns, but in that year the inhabitants joined with the burgesses. It appears by a petition presented 28th April, 1691, that the constables were then the returning officers; and 28th January, 1695, the only question was, whether the right of voting was confined to a particular description of inhabitants. The right, of election thus granted originally by charter to a select body, we might presume would be lost at its dissolution, but on the contrary the inhabitants at large usurped the privilege, and have exercised it ever since, without inquiry or molestation.

Boroughs by
act of par-
liament.

IV. BY ACT OF PARLIAMENT.

The earliest act of parliament by which any district was authorized to send members is the 27 Hen. VIII. c. 26. whereby that privilege was conferred on the county and town of Monmouth, and on the counties and shire towns of Wales (except only the shire town of the county of Merioneth). By the 34 and 35 Hen. VIII. c. 13. representatives were given to the county palatine and city of Chester; by the 34 and 35 Hen. VIII. c. 26. s. 111. to Haverford West; and by the 25 Car. II. c. 9, to the county palatine and city of Durham. These acts being all found in the statute books, I shall content myself with only referring to them here.

History of
representa-
tion.

In the first volume of this work it was intimated, that in the ancient parliaments of England there was a representation, not of the inhabitants but of the property of the kingdom. The king was the representative of all the land he held in ancient demesne, and of all he had granted out on burgage tenure; the clergy and temporal lords, of their respective estates, whether in counties or boroughs, and in consequence the tenants of the lords (spiritual or temporal) attending parliament, could neither vote for knights

knights of the shire, nor be forced to contribute to their wages; the knights of the shires were delegated for such lands as were not represented by the king or lords; and thus the representation of all the landed property of the kingdom was complete.

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representation.

When the lands in ancient demesne, and held by burgage tenure, were first called upon to send representatives, has been much controverted by antiquarians. Brady contends strenuously, that it was not till the twenty-third year of Edward the First; and it must be confessed that he brings a strong body of evidence to support his opinion. On the other hand, lord Lyttelton and others contend for a period of much higher antiquity, founded chiefly on the claims of the boroughs of St. Albans and Barnstable, which will be noticed presently. Perhaps in this, as in many other cases, the authorities on both sides may be reconciled.

In return for the peculiar privileges enjoyed by the tenants in ancient demesne, they were not taxed by parliament along with the tenants by military services, but were subject to the payment of an arbitrary impost, at the pleasure of the king, called *tallage*. It might not only be exacted *when* he thought fit, but the *amount* of it rested in his own discretion. Self interest formed the only bound to his rapacity, from the apprehension,

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representa-
tion.

Brady of
Boroughs,
p. 103.

Ib. 259.

1 Mad. Exch.
p. 725.

hension, that if his tenants were impoverished too much, his lands might be uncultivated and unproductive. So in all other cases, where privileges were sought from the crown, they were purchased by a submission to increased rents or services, and those privileges, which were granted to the burgage tenants, and put them nearly on the same footing with tenants in ancient demesne, were accompanied with increased burdens, and subjected them also to arbitrary tallages. In general both were tallaged at the same time and to the same amount. This consequence of a charter of liberties did not deter persons from seeking it from the crown, as may be seen in the case of New Sarum, in the 11th of Henry the third; and such was the general understanding upon this subject, that the trading within and enjoying the liberties of a borough was esteemed a reasonable plea for making its inhabitants liable to tallage. There is a difference sometimes made in the entries on the rolls between the tallage paid by the tenants in ancient demesne and in burgage, viz. that the former are distinguished by the word *assisa* or *tallagium*, the latter generally by the words *de dono*. This perhaps may denote that the one was a payment originally founded on a voluntary compact, the other necessarily resulting from the tenure itself.

The

The king's right to demand tallage was not confined merely to his ancient demesnes, but extended to all the lands which came to him by wardship or escheat. Madon observes that, "as the king had tallage of his demesne men, so some subordinate or private lords had tallage of their's; but that many of the lands which were talliable to private lords were such as at one time or other moved from the king, and were wont to be talliated by him while they were vested in the crown, as when the king granted to a subject a demesne manor or town, together with the homages, aids, tallages, and other profits thereof, to hold to the grantee and his heirs, in such case the grantee and his heirs had power to talliate the men of such manor or town to their own use, when the king talliated his demesnes and manors throughout England, but not otherwise or at other times." And sometimes the king granted away towns with a reservation of the tallage. But Madox further observes, that the tallages assessed upon the king's ancient demesnes were much more heavy than upon other lands in the counties at large; and therefore it was considered as a privilege to be tallaged with the community of the county, and not with the tenants in ancient demesne; and of claims to be so privileged he gives some instances. The

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representation.

Madox Exch.
vol. 1. p. 516.

Ib. p. 723.

borough

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tion.

borough of St. Albans is certainly one of the most ancient boroughs in the kingdom, but in Doomsday-Book is called a vill, and placed among other towns and lands of the abbey in these words: *Terra ecclesiæ S. Albani*. There were forty-six burgeses who paid annually *de theloneo et de aliis redditis villæ*, xi. lib. et xiiii. solid. The claim of the burgeses, in the eighth year of Edward the Second (so much relied on to prove that all boroughs were represented at a much earlier period than Brady contended for) was probably no more than a complaint against the abbot, who had claimed a right to tallage them; in answer to which they alledge that they held of the king *in capite*, and ought to be summoned to every parliament by two of their burgeses, not to take a part in the proceedings, but “to perform their services” to the king. This curious record is as follows:

1 Madox's
Excheq.
p. 759,
note (w).

Ad petitionem burgensum villæ de sancto Albano, suggerencium regi, quod licet ipsi teneant villam prædictam de rege in capite, et ipsi sicut cæteri burgenses regni ad parlamenta regis cum ea summoniri contigerit, per duos comburgenses suos venire debeant, prout totis retroactis temporibus venire consueverunt, pro omnimodis serviciis regi faciendis, (a)

(a) It seems to have been not uncommon for persons to attend the king at the time when the parliament was assembled,

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batis
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quæ quidem servicia iidem burgenſes et antecēſſores ſui burgenſes villæ prædictæ tam tempore domini E. nuper regis Angliæ patris regis et progenitorum ſuorum, quam tempore regis nunc, ſemper ante inſtans parliamentum ut præmittitur, præſtiterunt. Nomina quorum burgenſium ſic pro dicta villa ad parlamento regis veniencium in rotulis cancellariæ ſemper irrotulata fuerunt. Nichilominus vicecomes regis comitatus Hertfordiæ ad procuracionem et favorem abbatis de Sancto Albano et ejus conſilium, burgenſes prædictos præmunire, ſeu nomina eorum prout ad ipſum pertinuit retornare, ut ipſi ſervicium ſuum prædictum facere poſſent penitus recuſavit, in contemptum regis et burgenſium prædictorum præjudicium et exhæredationis periculum manifeſtum. Super quo petunt remedium oportunum.—Reſponſum eſt per conſilium. Scrutentur rotuli, &c. de cancellaria, ſi temporibus progenitorum regis burgenſes prædicti ſolebant venire vel non. Et tunc fiat eis ſuper hoc juſticia, vocatis evocandis ſi neceſſe fuerit.

In like manner the burgeſſes of Barnſtople, in Devonſhire, in the 17th Ed. III. in a petition to

ſembled, as in the following inſtance, where the vaſſal too was allowed to appear *by attorney*.

Theobaldus de Verdon peſuit loco ſuo Johem. Herbert ad intereſſend. pro eo inſtanti parlamento. Et ad reſpondend. de ſervicio ipſius Theobaldi de exercitu Scocie de anno regni domini regis nunc XXXIII. per Theſ'. in pleno parlamento Herf', Salop', Staff'.

Rolls of Parliament,
vol. I. p. 191.
A. 35 Ed. I.

the

History of
representation.

4 Ld. Lytt.
p. 102.

the king in parliament, claiming privileges which they alledge were granted to them by a charter of Athelstan, then lost, and which privileges they state *a tempore consecutionis dictæ cartæ usi fuerunt et gavis, go on, ac ad singula parlamenta nostra, et dictorum antecessorum nostrorum alios burgenses pro communitate ejusdem burgi mittere nec non in singulis taxationibus, &c. consueverunt.*

In the course of the proceedings there were three inquisitions and returns, and in the result it was left doubtful whether such a charter had ever been granted by king Athelstan; but the two first returns agreed in finding the right of the petitioners to send burgesses to serve in parliament from time immemorial, and the last was silent about it. The borough, however, has continued to send representatives ever since, without any new charter, but purely by prescription. The last of the three returns, upon a claim of the crown made, that this borough was held *in capite*, found that *Joannes de Audley* held this borough of the king *in capite per baroniam*.

In this case of Barnstaple there certainly is a degree of mystery which I am unable to explain satisfactorily; for it is clear from Doomsday-Book (a), that in the time of Edward the Confessor

Doomsday,
p. 100.

(a) Terra regis. Rex habet burgum Barneſtaple. Rex habuit in anio. Ibi sunt intra burgum xl. burgenses & ix. sunt extra

fessor this borough was held in ancient demesne, and consequently liable to be tallaged at the pleasure of the crown. I suspect the authenticity of the charter set up as a grant of the privilege of sending two members to parliament, because it is not known that any such grant was ever made till many ages afterwards. It may be presumed, from the case of St. Albans, that some few boroughs were exempted from tallages on condition that they should perform certain services by deputies sent to the place where the parliament was assembled, or perhaps on condition that they should pay in the same proportion as the counties, and this charter might have been of this kind; but the granting of such charters was so manifestly injurious to the interest of the lords, that they must have been very rare. If the charter of Athelstan ever had existence, this borough might have escheated to the crown before the compiling of Doomsday-Book, and the entry be accounted for. Or it is possible that this borough might have been tallaged along with the king's demesnes, and the proceedings above mentioned might be confined merely to a claim of exemp-

extra burg. Inter omnes reddunt regi xl. sol. ad pensum, & epo. constanstenfi xx. solid. ad numerum. Ibi sunt xxiii. dom. vrsitate postquam rex venit in Angliam.

tion.

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tion. The main question is, whether the two burghesses attended the parliaments in order to perform for their community the services due from it to the king, or their lord, as was the case with the burghesses of St. Albans, or for the purpose of assisting at the parliament in a legislative capacity. That the representatives, or rather the attornies of boroughs who attended to perform services to the king, were allowed to assist in the seventeenth year of Edward the Third, is highly improbable, for (without insisting upon the right of members for counties to legislate being then only of late origin) we find no certain mention of them in the proceedings or records of parliament; and in answer to the loose and ambiguous expressions found in some of our historians, we shall shew a period from which they were regularly summoned, and an important revolution at that date, which will fully account for the innovation.

We have before stated, that our kings claimed and exercised the prerogative of tallaging their demesnes and boroughs at pleasure, and the barons in general followed their example with sufficient precision. Edward the First, in the 22d year of his reign, issued his writ (probably in the usual form) to certain commissioners to receive from each city and borough of his demesne a sixth part of the moveable goods of the burghesses,

as a subsidy for carrying on the war in which he had just engaged, and for carrying on which the "comites, barones, et omnes alii (a) de regno nostro," had given a tenth. The commission for levying it on the city of London, which had set the example, was in this form:

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representation.

Rex dilectis et fidelibus suis custodi, vicecomitibus, aldermanis, et toti communitati civitatis sue London salutem. Cum vos in forma qua nuper nobis quintam decimam concesseratis, sextam partem bonorum et mobilium vestrorum in subsidium guerra nostre nobis concesseritis liberaliter, nos ut illa sexta pars ad minus dampnum et gravamen vestri et singulorum civitatis ejusdem levetur et colligatur providere volentes assignavimus Johannem de Banquelle, Thomam de Romeyn, Hamonen Bax, Willielmum de Betonia, et Gilbertum de Marchia, una cum dilecto clerico nostro magistro Willielmo de Wymundham, &c.

Brady on Bor.
p. 66.

The city of London had paid on former occasions large sums of money for tallages to the king: the earliest entry I have found is in the 5. Hen. II. *Idem vicecomites reddunt compotum de M. et xliii. l. de dono civitatis Londonie.* The words *de dono* were probably used here, as on other occasions, to describe a tallage. And

Mad. Ex.
vol. i. p. 696.

(a) The *omnes alii* here certainly could not include the citizens and burghesses who were tallaged at a sixth.

it

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it should be remarked, that in the commission just mentioned, tallage is described as a grant to the crown, which may tend to explain the words *de dono*.

The commission for levying this tallage on the other boroughs was in this form:

Brady on Bor.
p. 66.

Rex dilecti et fideli suo Roberto de Ratford, salutem, cum cives et probi homines nostri London sextam partem bonorum suorum mobilium nobis in subsidium guerræ nostræ gratanter concesserint, ut aliis qui sunt de nostris villis dominicis exemplum præbeant, ad consimile subsidium faciendum, assignavimus vos ad petendam hujusmodi sextam partem in singulis dominicis civitatibus, et aliis villis nostris in comitatibus Kancie, Suffex, Surrey, et Suthampton, secundum taxationem decimæ jam nobis in regno nostro concessæ et ideo vobis mandamus, quod assumptis vobiscum vicecomitibus locorum, ad singulas dominicas civitates, et alias villas nostras personaliter accedatis; et homines earundarum civitatum et villarum ad concedendam et præstandam nobis prædictam sextam partem juxta taxationem prædictam diligenter, ex parte nostra requiratis, et efficaciter inducatis, modis quibus videbitis expedire. Et quod inde feceritis nobis aut thesaurario et baronibus nostris de scaccario sine dilatione constare faciatis. In cujus rei testimonium has literas nostras fecimus patentes. Teste venerabile patre, &c. 21 die Novembri, anno 23.

It

It is probable that the citizens and burghesses did not submit to the king's demands without murmuring, and his increasing necessities obliged him to abandon this prerogative of laying tallages at pleasure, for a more conciliating and less dangerous mode of raising a supply. In the 34th of Edward the First is the first entry at length of a writ of summons to knights to attend the parliament, which Prynne was able to find; and what is remarkable enough, and induces a suspicion that even the representation of counties was only of recent introduction (a), a second writ was issued on the day after, requiring the attendance of two additional knights for each county. In the next year are found writs, by which not only knights were summoned, but citizens and burghesses; and as Brady justly observes, it was expressly stated in the writs, that they were to act as a separate body from the knights. The words are, "*Ita quod dicti milites plenam et sufficientem potestatem pro se et communitate com. predicti, et dicti cives et burghenses pro se et com-*

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Brief Regist. ad part p. 31.

Brady of Boroughs, p. 69.

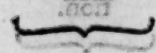
(a) The following is an instance of an irregularity of another kind. In the 35 Edw. I. writs had issued to the sheriffs of counties to return two knights for every county, two citizens for every city, and two burghesses for every borough; yet we find the following entry: *Homines Salop' ponunt loco suo Johem. de Cherleton vel Clementem de Castreton ad consentiend. pro eisdem hiis qui fieri contingunt in isto Parlamento, et ad faciend' ulterius, &c.*

Rolls of Parl. vol. 1. p. 191.

D

munitate

History of
representation.



Brady on Bor.
p. 69.

munitate civitatum et burgorum predictorum divisim ab ipsis tunc ibidem habeant, ad faciend. tunc quod de communi consilio ordinabitur in præmissis." And in fact they made a separate grant from the earls, barons, and knights, the former giving a seventh, the latter only an eleventh, of their moveable goods. In consequence of the alteration which is supposed to have taken place at this parliament, the commissions for levying these imposts were also changed, and made to run in this form: *Rex militibus, libere tenentibus, et toti communitati comitatus Roteland, salutem, cum comites, barones, milites, et alii de regno nostro in subsidium guerra nostræ nunc sicut alias, nobis et progenitoribus nostris regibus Angliæ, liberaliter fecerunt undecimam de omnibus bonis suis mobilibus. Et cives, et burgenses, et alii probi homines de dominicis nostris, civitatibus, et burgis ejusdem regis (a), septimam de omnibus bonis suis mobilibus exceptis his quæ in decima ultimo*

Rolls of Parl.
vol. i. p. 269.

(a) In the 34. Ed. I. was issued a writ with this preamble, which shews the situation of the representatives for cities and boroughs: *Rex dilecto clerico suo magistro Ricardo de Northampton salutem. Sciatis quod cum archiepiscopi, episcopi, abbates, priores, comites, barones, milites, liberi homines ac communitates comitatum regni nostri tricesimam omnium bonorum suorum temporalium mobilium, civisque et burgenses, ac communitates omnium civitatum et burgorum ejusdem regni, necnon tenentes de dominicis nostris vicesimam bonorum suorum mobilium exceptis hiis qui alias in hujusmodi concessione subsidii excipi consueverunt, nobis curialiter concesserunt et gratanter; ac nos, &c.*

nobis concessa excipiebantur, nobis curialiter concesserint et gratanter, nos ut undecima et septima prædictæ ad minus dampnum et gravamen, &c. assignavimus dilectos et fideles nostros Rob. de Flixthorp & Johannem de Wakerly, &c. ad dictas undecimam et septimam in comitatu prædicto assidendas, taxandas, levandas, et colligendas, &c. Teste rege apud Westmonasterium quarto die Decembris.

History of representation.

It may be remarked, that this record states this tax to have been granted by the representatives of the king's ancient demesnes, as well as of his cities and boroughs; and by a writ of summons, issued in the 34th year of this reign, to the sheriff of Bedfordshire and Buckinghamshire, he was commanded to return *de utroque comitatu tuo duos milites, et de qualibet civitate in balliva tua duos cives, & de quolibet burgo duos burgenses vel unum secundum quod burgus fuerit major vel minor, &c.* The prelates, &c. gave a thirtieth: "*Cives quidem et burgenses civitatum et burgorum ac cæteri de dominio regis congregati,*" &c. gave a twentieth part. So that though the writ did not expressly mention tenants in ancient demesne, they were in fact summoned and returned, and consented to the grant.

Brady of Boroughs,
App. pa. 25.

Ib. App.
p. 28.

In the 1st Ed. II. were present "*Civesque & burgenses ac communitates omnium civitatum et burgorum ejusdem regni, necnon tenentes de antiquis dominicis coronæ nostræ,*" &c.; and in 3d Ed. II.

Ib. p. 78.

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the commons delivered articles of grievances, the 6th of which began thus: "*Que les chivalers, gentz de citez é de burghs, é des autre villes, qui sont venuz a son parlement per son commandement pur eux et pur le peuple,*" &c. Some time after the tenants in ancient demesne were frequently left out of the preambles to the commission for levying the taxes, and not mentioned as grantors; and after the 8th of Edw. III. (in which year, according to some, regulations were established concerning taxes on personal property) they are never mentioned specifically, but are included in the general words "citizens and burgessees."

The writ of summons, in the 23d of Edw. I. was confined to the king's cities and boroughs; and it is not natural to suppose that the cities and boroughs of the barons would be inclined, or if inclined, permitted by their patrons, to pay to the king so large a portion as a sixth of all their moveables. If they were not represented in the 23d of Edw. the First, there is no reason to suppose they ever were represented afterwards. Possibly, therefore, all the boroughs of this description, which have sent members since, were in the hands of Edward the First at the period we have just mentioned.

Number of
Boroughs.

The earliest writs to the sheriffs of counties for returning representatives to parliament, handed

ed down to us, were couched in general terms, requiring them only to cause to be elected of every city within their respective county two citizens, and of every borough two burgesses. There was no uniform rule to go by; the returns varied according to circumstances, and much was necessarily left to the discretion of the returning officers and sheriffs. The cities and boroughs found the sending of representatives, and payment of their wages, a burdensome distinction, and sometimes protected themselves by charters of exemption, excused themselves under pretence of poverty, or failed to elect without giving any reasons at all. The sheriffs sometimes returned the excuses and omissions; sometimes, without taking notice of either, returned the members elected; and sometimes summoned others in the room of those who could not attend. By this conduct the sheriffs drew upon themselves no animadversion; for the people were grateful for the indulgence, and the crown sustained no injury, because the tax consented to by the majority of representatives was always levied upon all without distinction.

Before, and long after the conquest, the words "vill," "borough," and "city," were used occasionally for each other; but, for ages past, the two latter have had appropriated signifi-

Number of
Boroughs.

tions. In the list of boroughs are sometimes included the cinque ports and their members, and the two universities; and the house of commons is generally said to consist of knights, *citizens*, and *burgesses*.

In the 23d of Ed. I. it appears, by the lists preserved in the preface to Glanville's "Reports of Cases determined by the Commons in Parliament," that 145 places only returned members to parliament, whereof 35 were counties; and that in the 25th and 26th years of that king, 24 more cities and boroughs likewise sent members. In general, notwithstanding the omissions and partialities of sheriffs, the numbers returned were nearly the same; for Sir John Fortescue tells us, that in the reign of Henry the Sixth the house of commons consisted of more than 300; and Dr. Willis says, from the reign of Edward the First to that of Edward the Sixth, not 30 new boroughs were created, or at least claimed the privilege.

Cap. 18.
p. 40.

Not. Parl.
vol. I. pre-
face p. ix.

Boroughs
created or
restored.

In the reign of Henry the Eighth, acts of parliament gave to the county palatine and city of Chester, the county and town of Monmouth, and the counties and boroughs, being shire towns, of Wales, except the shire town of Merionethshire, (*viz.* Menoholt) and Haverfordwest, the privilege

lege to be represented; and it was conferred on the town of Berwick on Tweed by royal charter. This king also restored the borough of Orford, after it had discontinued to send members ever since the 35th of Edward the First. And it is supposed that Westminster was first summoned to send members in this reign.

Boroughs
created or
restored.

2 Carew,
P. 233.

The restoration of Orford (which is the first instance of the sort) seems to have passed without notice; and Edward the Sixth followed the precedent, by restoring no less than four boroughs, and creating the same number, in the first year of his reign; and he restored six, and created ten more, in the sixth.—Mary restored two and created ten.—Queen Elizabeth began her reign with restoring Tregony, and creating four others; and in the fifth year of her reign she restored Beverly.—The house of commons having, in the disputes occasioned by the reformation, acquired much consequence, took umbrage at this exercise of prerogative, which had so frequently before passed unnoticed; and on the 28th Jan. 1562, (5th of Elizabeth) the speaker declared, that the lord steward had agreed that these new members should resort to the house, and, with convenient speed, shew their letters patent why they be returned into parliament. It does not appear that these letters patent were ever shewn; but the proceedings prove incon-

D'Ewes's
Journ. p. 80.

Boroughs
created or
restored.

Ib. p. 156.

Ib. p. 159.

testably that the royal prerogative to *create* parliamentary boroughs was not disputed. Shortly afterwards the commons had fresh occasion for discontent, for on the 6th of April, 1571, (13th of Elizabeth) Mr. Treasurer, Mr. Serjeant Manwood, and others, were appointed to confer with the Attorney General and Solicitor General as to the validity of the returns of seven boroughs which had been created; of East Retford, which had been restored after a discontinuance ever since the 9th of Edward the Second, and of Woodstock, which had not returned members from the 33d of Edward the First till the 1st of Mary, when, having returned to the two next parliaments, it had discontinued ever since. In this contest the commons were unsuccessful; for on the 9th of April, 1571, on the report of the members for the conference, it was, with the consent of the Attorney General, ordered that the members objected to should remain according to their returns, because the validity of their charters was to be examined elsewhere, if cause be. Elizabeth persisted in the exercise of this prerogative; and in the 27th year of her reign no fewer than eight new boroughs were created, and three restored. That this practice was well calculated to increase the influence of the crown, and the power of its favourites, is apparent from the following memoir, preserved among the pa-

pers of the borough of Newport, in the Isle of Wight, which, having discontinued from the 23d of Edward the First, was one of the boroughs restored in this reign.

Boroughs
created or
restored.

“ Memorandum. That at the special instance
“ and procurement of Sir George Carew, knt.
“ marshal of her majesty's most honourable
“ household, and captain of the Isle of Wight,
“ two burgessees were admitted into the high
“ court of parliament, holden at the city of
“ Westminster, the twenty-third day of Novem-
“ ber, in the twenty-seventh year of the reign of
“ our most gracious and sovereign lady Elizabeth,
“ by the grace of God, Queen of England,
“ France, and Ireland, defender of the faith, &c.
“ for our town of Newport (that is to say) Sir
“ Arthur Bowcher, knight, and Edmund Carey,
“ esquire. Whereas there were never burgessees
“ admitted in any court of parliament for that
“ time during the memory of man before, for
“ the said town; the sheriff's warrant (Thomas
“ Dabridgecourt, esquire) for that election bears
“ date October 18, 1584, and is directed to the
“ bailiff of the town of Newport, in the Isle of
“ Wight, and the returns made by the bailiff and
“ burgessees of the said borough.”

3 Carew,
P. 13.

In the beginning of his reign, James the First restored Harwich and Evelham to the privilege of returning members; but, perhaps, to avoid the

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the difficulty Queen Elizabeth had encountered, did it by his letters patent, making them new corporations, and expressly giving them that right; he also gave the privilege to the two universities of Oxford and Cambridge, and four other places, by his charter, at different times, and it does not appear that his prerogative was contested in any of these cases; but in the eighteenth year of his reign an incident happened, which shewed the rapid advance of the commons, and that the people, in their representatives, were possessed of a powerful check on the arbitrary exercise of prerogative; for the boroughs of *Welchester* and *Pomfret* petitioned the commons to be restored to the liberty of sending members, and on the 27th of March, 1621, writs were ordered accordingly; and on the 4th of May, 1624, *Hertford*, *Agmondesham*, *Wendover*, and *Great Marlow*, were also restored by votes of the commons. In the reign of Charles the First the commons restored no less than nine other boroughs, viz. *Malton*, *North Allerton*, *Milborne Port*, *Weobly*, *Seaford*, *Cockermouth*, *Ashburton*, *Honiton*, and *Okehampton*, while it is remarkable enough, that the crown in no one instance increased the number of representatives.

In the reign of Charles the Second the county palatine of *Durham* and its city were enabled to send

and members by act of parliament; and in the twenty-ninth year of his reign he granted, by his charter, the same privilege to Newark upon Trent, which occasioned much dispute in the house of commons as to its legality, and is the last instance in which the exercise of this branch of the prerogative was recognized.

Boroughs
created or
restored.

James the Second procured several boroughs to surrender their charters, and granted new ones, by which the right of voting was altered; but the house of commons, in all cases, resisted the innovation, and established the franchise of the ancient electors.

From the revolution to the union of England and Scotland, no boroughs were either created or restored; and by one of the articles of union, the proportion of members to be sent by each kingdom was finally settled, and this prerogative of the crown, and privilege of the commons, taken away in future, at least so far as either might be exercised in making additions to the number of British representatives.

The British house of commons now consists of five hundred and fifty-eight members, whereof England and Wales return five hundred and thirteen, Scotland forty-five. Of the five hundred and thirteen, the English cities and boroughs
(including

Present number of the house of commons.

Present num-
ber of the
house of
commons.

(including the cinque ports and two universities, two hundred and six in number) choose four hundred and nine; the Welsh twelve; each of the cities and boroughs of England send two members, with the exception of Abingdon, Banbury, Bewdley, Higham, Ferrers, and Monmouth, which send only one each; and the city of London, which is distinguished by sending four; each of the boroughs of Wales elect only one.

The following is a summary of the number of boroughs restored or created from the reign of Henry the Seventh to the present time:

	Members.	Members.
By King Henry VIII. restored	2,	created 33
Edward VI.	— 20	— 28
Queen Mary	— 4	— 17
Elizabeth	— 12	— 48
King James I.	— 16	— 11
Charles I.	— 18	— 0
Charles II.	— 0	— 6
	—	—
	72	143
		72
		—
Total restored and created in those reigns	215	—

Number

Of Cities and Boroughs in general.

45

Number of the house of commons at the
beginning of Henry the Eighth's reign 298
Restored and created since, as before
enumerated — — — 215

Present num-
ber of the
house of
commons.

Number of the house of commons at the
union — — — 513
Members for Scotland then added — 45

Number of the house of commons at
present — — — 558

CHAPTER

CHAPTER II.

OF THE RETURNING OFFICERS FOR CITIES AND
BOROUGHES.

Returning
officers in
general.

IT would be an almost endless task to pursue the separate history of each returning officer, but in general it may be observed, that the presiding officer in the district or borough, whether incorporated or not, has the return of the writ or precept, where there is no charter or act of parliament to direct otherwise; and therefore in all the boroughs which founded their claim to elect only on writs of summons, the common law officers immediately assumed the right of making the returns without any express authority: and in the cases of Minehead and Aylesbury, stated in the last chapter, as soon as those places were incorporated, the right to return the members was exercised by the presiding corporate officers; and when the corporations were dissolved, that right devolved, as a matter of course, to the presiding officers by the common law. It seems, however, from the following cases, that this has not always been a settled rule.

Bletchingly

Returning
officers in
general.

Glanv. p. 31.

Bletchingly is an ancient borough by prescription, not incorporated, wherein there are divers burgages or borough tenements, the tenants whereof are called burge-holders; and the lord of the borough for the time being hath a bailiff of the said borough to perform the duties there of the reeve or bailiff of an ordinary manor; and this borough hath used, time out of mind, to send two burgeses to every parliament chosen by the said burge-holders, resident within the said borough for the time being, or by the greater number of them for that purpose upon lawful warning duly assembled within the said borough. The sheriff for the county of Surry, having received the writ of summons for the parliament, dated the thirtieth of December, 21 Jac. returnable the twelfth of February following, did, upon the sixteenth of January, direct his precept to the said bailiff and burgeses of the said borough, which, on the seventeenth of January, 21 Jac. was delivered to one Mr. Wright, one of the burge-holders, and he acquainting some others of the burge-holders therewith, they told the rest thereof, insomuch as by this means all of them had notice of it, and that the meeting for the election should be at a certain and fit place within the borough upon the two and twentieth of the same month; at which time and place seventeen of the said burge-holders met,

Returning
officers in
general.

met, but the rest absented themselves, albeit they had notice of the warning as aforesaid; neither was the said bailiff then and there present. At this meeting Sir Myles Fleetwood and Mr. Hayward were propounded, and chosen by the greater number of voices of the said burge-holders so assembled, and by them returned to the sheriff; but the rest of the inhabitants, not being burge-holders, did not attend, nor had any warning. On the eighth of February, being Sunday, the bailiff proclaimed openly in the church, that the next day the burge-holders, and all the rest of the inhabitants, should meet to elect burgessees. The next day, divers of the inhabitants, to the number of thirty, met, and chose the said Sir Myles Fleetwood and Lovell, and returned them.

Glanville,
p. 37.

The second resolution of the committee was,
 " That the lord's bailiff of the said borough, the
 " same being no corporation, nor the said bailiff
 " the head officer there, but only the lord's mi-
 " nister, is not such a person as ought to have
 " receipt of the warrant, or precept, or the ap-
 " pointing of time and place, or giving of warn-
 " ing for this service, which is for the king and
 " commonwealth, and not for the lord of the
 " borough, who by reason of his interest in the
 " borough hath nothing to do in the matter of
 " such election; and that therefore the precept
 " so delivered to the said Mr. Wright, being one
 " of

" of the electors, was well delivered; for it ought
" to be delivered to some of them; neither can
" one single warrant be well delivered to them
" all at once."

The third resolution was, " That the said
" precept, or warrant, albeit it were directed to
" the bailiff and burgeses of Blechingley, was
" good enough; for if a warrant, precept, or re-
" turn for burgeses to the parliament have suf-
" ficient substance, it shall not be adjudged void
" for want of form, for the reasons expressed in
" the case of Southwark; and in this case the di-
" rection of the precept being to the bailiff and
" burgeses, who are not a corporation known by
" any such name, the word *bailiff* is surplusage,
" and the direction *to the burgeses*, who only have
" to do in the election, is sufficient in substance,
" and ought to be interpreted and applied only
" to signify such kind of burgeses, namely burge-
" holders, as have voice in the election."

The fourth resolution was, " That the warning
" given for the time and place of election, in
" manner and form only as aforesaid, was suffi-
" cient; for where there is no known or special
" officer to this purpose within the borough, and
" the electors are many, and all in equal degree
" of right and interest, every one of them is a law-
" ful officer to this purpose, to warn such of his
" fellows, as he thinks good, to meet at such time
" and place as they appoint. Wherein if all have

E

" convenient

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general.

“ convenient notice by such means as aforesaid,
“ and that the major part of them do meet ac-
“ cordingly, their warning is good, and their
“ assembly and voice thereupon lawful, without
“ any general notice; for that the law hath not
“ assigned any certain form of general notice
“ to be given, albeit by the particular custom,
“ time out of mind used in some places, upon
“ ringing of a bell, or blowing of a horn, or the
“ like, with the general and public declaration of
“ the cause thereof, all men, without expecting
“ for any particular warning, are to attend at the
“ time and place so generally notified, or are to
“ lose their voices; but no such custom appeared
“ in this case.” All these resolutions were agreed
to by the house (*a*).

In the borough of Old Sarum it seems to have
been long disputed, whether the bailiff should be

1. Journ.
p. 745.

(*a*) This case is very imperfectly stated in the Journal, but it may be collected from what appears there, that though Bletchingley is a borough, it is no corporation; and that for that reason the precept was improperly delivered to the bailiffs, when it should have been delivered to the borough-holders at large. The House resolved, that the bailiffs have nothing to do with the election, and that none but borough-holders ought to vote, and substantiated the election by the majority, notwithstanding this irregularity, and no public officer had given previous notice; but, from the report in Glanville, it appears notice had been given in fact to all the electors. From this time till the 7th and 8th of William the Third, cap. 25, passed, it was a frequent cause of dispute, whether the return should be made by the presiding officer or the electors.

the

the returning officer. April 27, 1660, Mr. Turner reported from the committee, touching a double return, that Seymour Bowman and John Norden, Esquires, were returned by the bailiffs and burgeses, and Algernon Cecil, Esquire, singly by the burgeses without the bailiffs; and that the committee was of opinion, the former should sit till the merits of the said double return should be determined, and the House agreed. But the merits were never decided. On the 14th of March, 1688, it was resolved by the House, that the right of electing and returning members to serve in parliament was in the freeholders, being burgageholders of the said borough. Eleventh of December, 1705, there was no dispute as to the election of one of the candidates, and the other two, having an equality of votes, the bailiff returned both, and one question (besides the merits of the election) was, whether the return should be made by the bailiff of the manor, or the burgators or burgeses. On the one side, to prove that the bailiff of the manor had nothing to do with the return, the resolution of the 14th of March, 1688, was cited, and on the other side it was admitted, that the return must be by the burgators, "but that the precept ought to be delivered to the bailiff, who is the computer of the votes." It was proved, that in the 31 Car. II. the precept was directed to, and returned by the bailiff, as in the present case. The House did not come to any

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officers in
general.

8 Journ. p. 3.

10 Journ.
p. 47.

15 Journ.
p. 60.

Of the Returning Officers

specific resolution as to the right of the bailiff to preside, but proceeded to the merits of the election, and determined that one of the candidates was duly elected.

9 Journ.
p. 316.

Ib. 337.

The act of the 25th of Charles the Second, cap. 9, which gives members to the county palatine and city of Durham, vests the exercise of that franchise in the mayor, aldermen, and free-men, but does not say who shall preside at the election. On the 13th of April, 1675, a debate arose concerning the issuing out of writs for this city and county, and it was referred to the committee of privileges. On the 14th of May the committee reported, that there was no difficulty as to the county; but respecting the city, this special report was made:

“ It appears not plain who shall order the
“ election, or be judge of the poll, in the city of
“ Durham; if the sheriff of the county, who
“ hath only a precept, and no writ, then he must
“ order in this city, where there is a mayor,
“ though it be no city and county; the like is
“ not done in England; and for which he hath
“ no authority by the act. If the mayor must
“ order this election, and to be judge of the poll,
“ then he must have a precept so to do from the
“ sheriff, who acts but by a precept himself, and
“ there is one deputy makes another; deputy’s
“ precept upon precept; and for the latter pre-
“ cept to the mayor, there is no authority that
“ appears

“ appears in the act: wherefore the committee,
“ to prevent differences in the said city, and
“ double returns, have thus far stated the case to
“ the House, that their wisdom may take further
“ care therein, the case being too difficult for
“ them to determine.”

Returning
officers in
general.

On the 9th of February, 1677, there was Ib. 445.
again a reference to the committee of privileges,
which seems not to have been able to surmount
the difficulty; for after reporting in the same
manner as the former committee had done, they
add, “ but in regard it doth appear plain in the
“ said act who are to be the electors in the said
“ city, and that a writ might issue under the
“ great seal of England to the lord bishop of
“ Durham, or his temporal chancellor, in order to
“ the electing two citizens to serve in parliament
“ for the said city, and that the plain intention of
“ the said act is, that the said city should have
“ two such citizens to serve them accordingly;”
therefore the committee advised, “ to leave the
“ said doubt or difficulty to farther consideration
“ or determination, if need require;” and that
the speaker should issue his warrant to the clerk
of the crown to issue out a writ for electing two
citizens, according to the said act of parliament.
The House agreed, and the writ issued accord-
ingly.

Common
Law Officers.

Returning officers may be conveniently classed in two divisions, 1. such as are officers by the common law; and 2. such as are created by charters.

1. COMMON LAW OFFICERS.

Brady of Bo-
roughs, p. 89.

Brady has very justly observed, that wherever the return of members has been, or now is, made by the lord or lady of a manor, or their steward, the constables, ~~or~~ ordinary bailiff, or such inferior officer, they were formerly towns held in ancient demesne; and, in truth, most of the boroughs which are not incorporated have been at one time or other of that description.

p. 160, 161.

Willis, Not.
Parl. vol. 1.
p. 108, 129.

That lords and even ladies of manors have been permitted to make the returns of members, is proved by the cases of Aylesbury and Gatton, cited in the first volume of this work.

Aylesbury was incorporated in 1553 (1st of Mary) and sent members to parliament in the next year chosen by the corporate body; but in the 14th of Elizabeth, the lady of the manor made the return just alluded to. In the 28th and 39th of Elizabeth, the return was made by the lord. In the 43d of Elizabeth, the corporate body again elected, and the bailiff made the return; and this was continued till the 3d of

Charles the First, when the inhabitants and bur-
gesses elected; and since then the returns have
been made by the constables.

Common
law officers.

There are instances, in former times, of the re-
turns being made by the bailiffs of the district in
which the borough was locally situated, or to
which it was annexed: thus, in the 28th and 30th
of Edward the First, the returns for the borough
of Lynn, in Norfolk, were made by the bailiff of
the hundred of Frethebrigh. So also Chipping
Wicombe, which was not incorporated till the
reign of Edward the Fourth, was summoned to
send representatives in the 28th of Edward the
First, and the precepts were at first directed to
the bailiffs of the liberty of the honour of Wal-
lingford, to which it was annexed, who made the
return during the reigns of Edward the First and
Second, and the beginning of that of Edward the
Third. In the reign of James the First it was
incorporated, and ever since, the returns have
been made by the mayor.

Willis, Not.
Parl. vol. 1,
p. 110.

Perhaps the next most ancient returning of-
ficers were the stewards of the lords of boroughs:
in the 15th of Edward the Second the return of
the sheriff of Norfolk and Suffolk for Lynn was,

B. P. R.
p. 182.

*" Et respons. prædict. pro burgens. prædictæ villæ de
" Lenn Epi. michi dedit Petrus de Welle, seneschallus
" libertat. præd. villæ de Lenn, Epi. qui habet re-*

E. 4

" torna

Common
law officers.

" torna brevium et executiones eorum ;" and the steward continued to make the returns till the reign of Edward the Fourth. It should be observed, that this was a corporate town, and had been so ever since the 5th year of king John.

There are instances of the bailiff of the lord of the manor, in which the borough is situated, nominated by him, or chosen at the leet, making the return of members, but chiefly among the burgage tenure boroughs, most of which, as was observed before, probably were formerly ancient demesnes of the crown.

In some places the returns are made by the bailiff of the lord of the city or borough; and in a modern case, the right of such a returning officer was litigated. Peterborough, 1st Feb. 1727. The petitions of James Pix, bailiff of this city, and the dean and prebendaries of the cathedral church, complained, that the dean and prebendaries, by grant from Henry the Eighth, are lords of that city in right of their church, and have by their appointment a bailiff, to whom the sheriff of Northamptonshire used to direct his precept; but though timely application was made to the sheriff on behalf of the proper officer, *he directed his precept to Robert Smith, bailiff of the hundred of Nassaburg, adjoining to the same city, and caused it to be delivered to him, and not*

not to Pix, who demanded the same. There was a return made by Pix, which the sheriff refused to annex to the precept, and another by Smith, which he did annex. On the 9th of April, the merits of the return and these petitions were heard, and the House resolved, that "the execution of the precept for electing citizens," to serve in parliament for this city, "and the making the return thereof, are in the bailiff of the said city appointed by the dean and chapter of the cathedral church of Peterborough." The House ordered the return made by Smith to be taken off the file, "the same *not being signed by the proper returning officer* for the "said city of Peterborough," and that signed by Pix to be annexed.

Ib. p. 127.

The returns for the borough of Milborne Port form an exception to a general rule, which holds good in most cases, *viz.* that the precept will be a safe guide to go by, to discover who has a right to preside at elections; and that the return must be made by him to whom the precept is directed; for there the precepts are *directed* to the bailiffs, and the return made by the sub-bailiffs, or one of them. It is possible, that the statute of the 7th and 8th of William the Third, cap. 25. might have had such cases in view; for it expressly requires, that the precept shall be *delivered*, within three days next after the receipt of the writ,

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Law officers.

writ, to the proper officer of every borough, and within his jurisdiction, to whom the execution of such precept doth belong or appertain, and to no other person whatsoever. This statute makes it the duty of the sheriff to discover the proper officer, and to deliver the writ to him; and therefore the sheriff can receive no other return but his; and the enquiry is not now to whom the precept is directed, but to whom it has been delivered. The constitution of this borough is rather singular: it is a borough by prescription, and consists of nine parcels of burghage lands, each of which gives a right to vote. Each of the proprietors of these nine parcels appoints a capital bailiff, who is also entitled to vote; and two of these capital bailiffs preside annually by rotation; and these two may (if they think fit) appoint each of them a sub-bailiff to assist in the execution of their offices. In 1747, a double return was made, one by William Bishop, one of the presiding capital bailiffs; the other by Arthur Ansty the younger, a sub-bailiff, appointed by Thomas Medlicott, the other capital bailiff, who had voted at the election as capital bailiff, and was returned as the member by Ansty. It was objected to Bishop, that he had not taken the oath of office; but it seems to have been clearly proved that he had taken the oaths to government, and that none other was required

25 Journ. pa.
456, 457.

Common
law officers.

quired by the custom of the place; and the committee came to no decision on the objection. It was objected to Ansty, that by a resolution of 2d June, 1685, no mayor, bailiff, or other officer, to whom the precept ought to be directed, is capable of being elected for the same borough of which he is mayor, bailiff, or other officer, at the time of election; and that the return made by him operated as a return by Medlicott, whose servant and substitute he was, of this objection the committee took no notice, but in fact over ruled it by their decision of the main point in dispute. For although it was shewn that the presiding capital bailiffs had, in many instances, made the returns; that the precepts were always directed to the bailiffs of the borough; and that Medlycott was present, and voted at this election; the House resolved, " that the execution of the precept for electing
" burgeses to serve in parliament for this bo-
" rough, and the making of the return thereof,
" are *only* in the two sub-bailiffs of the said bo-
" rough, or in one sub-bailiff of the said borough,
" *if there are not two.*"

Over those boroughs, which remain in the situation of vills at the common law, the constables usually preside, and have the return of the sheriff's precepts. In many boroughs there are more than one constable, and they all join in making

Common
law officers.

making the return: they are generally nominated at the lord's leet.

At Newport, in Cornwall, which has never had a charter of incorporation, the officers called vianders are annually elected at the lord's leet, and are jointly the returning officers for the year.

At St. Michael, a portreeve, chosen by a jury of the chief inhabitants out of the six principal tenants, who are called deputy lords of the manor, makes the return.

II. OF CORPORATE OFFICERS.

Corporate
officers.

SOMETIMES the charters of boroughs have described the officers who should preside at the election of members, at others, that right has devolved on the superior corporate officer without any express appointment; but in both cases it is manifest that the charter is the foundation of their claims. In some places it is in the mayor, alderman, sheriff, steward, bailiff, &c. and in others, vested in more than one person acting jointly, as in the mayor and bailiffs, the sheriffs, the bailiffs, the guild stewards, &c.

If a person acts as a returning officer without right, he is punishable by the house of commons.

mons. Thus, Inverness, &c. 20th January, 1722, Hugh Baillie attended according to order, and the House resolved "That Hugh Baillie, clerk, in Inverness, having presumed to act as returning officer at the election of a burghs to serve in this present parliament for the district of burghs of Inverness, Nairn, Forres, and Fortrose, has acted in defiance of the laws of this realm, and is guilty of a high crime and misdemeanor, and of a breach of privilege of this House:" and for his said breach of privilege he was ordered into the custody of the serjeant at arms. Similar resolutions were made against Samuel Ireland, common clerk of the burgh of Kinghorn, for acting as returning officer at the election of a member for the district of burghs of Dysert, Burntisland, Kirkaldie, and Kinghorn, "when the burgh of Dysert was the presiding burgh of the said district of burghs." Ireland petitioned for his discharge on the 31st of January, and was discharged the day after; on the 14th of February, Baillie petitioned, and was discharged on the 15th; each upon his knees receiving a reprimand from the speaker, and paying his fees.

By the common law, all elections of corporate officers depend upon the legality of the election of the presiding officer; he must be not only in possession of the office *de facto*, but must be entitled

Corporate officers.

20 Journ. p. 92.

Ib. p. 113.

114.

Ib. 138, 139.

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officers.

titled to hold it *de jure*. This has in many instances been productive of great inconveniencies, and if the same rule prevailed with respect to the elections of members to serve in parliament, would have been the source of endless confusion. To avoid this difficulty, the law of parliament has departed from the general law of the land, and elections made under usurping presiding officers, where there has been the form of an election, have been uniformly supported.

1 Journ. p.
798.

Winchelsea, 24th May, 1624. The committee (with Mr. Glanville at their head) reported that "*the mayor, then an intruder, disfranchised divers persons that stood for Sir Alex. Temple. Committee clear of opinion, that the election of Mr. Finch good. He a good mayor to this purpose.*"

8 Journ. p.
673.

The same point was agitated a few years after in the same borough. Winchelsea, 9th January, 1666. The committee reported, that the mayor of Winchelsea had not, within one year next before his election, taken the sacrament of the Lord's supper according to the rites of the church of England; and that therefore the committee, upon perusal of the clause in the act of parliament for regulating corporations, which enjoins the taking of the sacrament, were of opinion, "that the return made by the mayor, of the election of Mr. Austin to serve for that place,

"place, was not good, but the election void." Upon this there arose a debate, which was adjourned to the next day, when the House disagreed with the committee, 138 to 63, and Mr. Austin was resolved to be duly elected.

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officers.

8 Journ. p.
674.

This case was cited in the Portsmouth case, 3d February, 1710, where the election was decided in favour of the petitioners, although a mayor who had not qualified under the corporation act, presided at the election; but it must be observed, that no objection was made to the election or return on that account.

16 Journ. p.
480.

In the case of Milborne Port, 18th June 1717, it was objected in the petition, that Guy White the elder, and John Barrett alias Barwick, who had been appointed sub-bailiffs, but had not qualified themselves for those employments according to law, by taking the oaths, and receiving the sacrament, took upon themselves to return Michael Harvey, Esquire. Sixth July, the committee reported, that Colonel Stanhope, the petitioner, was duly elected; and it should seem that the above objection to the return of Guy White the elder, and John Barrett, was abandoned, but insisted upon as against their votes only. It was answered that the sub-bailiffs are not such officers as are required by law to receive the sacrament, or take the oaths; and that the chief bailiffs, to whom they are deputies, are

18 Journ. p.
596.

Ib. p. 619.

not

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officers.

Dougl. Rep.
pa. 568, 1st
ed.

ii Journ.
pa. 77.

not required to take the oaths. Whether the committee entered into the consideration of the validity of these votes does not appear.

In the King v. Davie, lord Mansfield said,
“ How many instances do we recollect of mayors
“ acting as returning officers after there has
“ been judgment of ouster against the mayor,
“ under whom they derived their title, as at
“ Wigan, Marlow, Caermarthen, &c. ?”

So in the case of minors, Clithero, 2d Febr, 1693, there was a double return; both the candidates had equal numbers; and objections were made not only to votes on both sides, but to the returning officer, Roger Mainwaring, who had presided at the election of the sitting member. It was proved, that by the custom of the borough one of the bailiffs, called the out-bailiff, was chosen by the out-burgesses; the other, called the in-bailiff, by the in-burgesses; and that the out-bailiff is the chief, and has the precedence; and that minors could neither be admitted burgesses nor chosen bailiffs; and that Mainwaring and one Wilkinson had each an equality of the out-votes at the election of bailiffs, and Wilkinson was sworn in, but Mainwaring was refused to be sworn in, because he was not of age. It does not appear on what point the committee formed its decision; but they resolved that the sitting member was duly elected. The House afterwards

wards disagreed (162 to 140) and voted it to be a void election (188 to 108) but upon what ground does not appear.

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officers.

Whenever it is disputed who is the legal returning officer, which often happens in cases of double returns, the decision rested formerly with the house of commons, and now rests with the select committees; which committees, by the 28 Geo. III. c. 52. s. 25. are impowered, when they are of opinion that the merits of any petition does wholly, or in part, depend on any question or questions which shall be before them, respecting the right of chusing, nominating, or appointing the returning officer, who is to make return of such election, to require from each side statements in writing of the right of election, or of chusing, nominating, or appointing the returning officer, for which they contend. The cases found in the Journals naturally class themselves into those affecting the right of officers by the common law, and officers by virtue of charters of incorporation. Of the former sort are the following:

Commons
decide who
is returning
officer.

Minehead, 21st May, 1717. A petition of George Speke, esquire, lord of the manor of Alcombe, in this borough, was presented, complaining, that John Jones and George James had declared themselves constables of the borough; and asserts, that the said constables have no au-

18 Journ.
p. 562.

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thority

Commons
decide who
is returning
officer.

Ib. 564.

thority in any part of the manor of Alcombe; but that the tything man, chosen in the said manor is the only proper officer.—23d May, it appeared, that the high sheriff had sent two precepts to the borough, both dated the same day, and directed to the burgessees and electors, with orders to deliver the same to the constables; and that the occasion of sending the second precept was, for fear there might be a mistake in the first, which had been made out by a clerk in the absence of the under-sheriff; and though in this oversight the dispute about the return originated, it does not appear that any notice was taken of it by the House. Both the precepts were delivered to John Jones, one of the constables, who signed a receipt for one of them *as constable*, and the other without giving himself any description. The sitting members, when they had polled all they could, withdrew to a private house, and finding they had a majority on the poll as it then stood, such of the electors as retired with them made a return of the sitting members, and dispatched it immediately to the sheriff, who sent it to the clerk of the crown. In the mean time the constables went on with the poll, and on closing the books found the petitioners had the majority. They were accordingly returned to the sheriff, who refused to receive the return, having sent the other one to the clerk of the

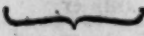
CROWN

crown twenty-four hours before. No precept was annexed to either of them. The House resolved, that the indenture signed by the burgessees of this borough, in return to the sheriff of the county of Somerset's precept for electing burgessees to serve in the present parliament for the said borough, not being signed by John Jones, one of the said burgessees, *to whom the said sheriff caused his precept to be delivered*, is an undue and insufficient return; and then, That the indenture signed by the said John Jones, and other burgessees of the said borough, and which was tendered to the said sheriff, is a due and sufficient return. And it was ordered that the clerk of the crown should take off from the writ the former indenture, and that the sheriffs should receive and annex the latter. The constables and lord of the manor having petitioned to be heard, they were heard on the 13th of June, 1717, as to the right of the constables to preside at elections; "and the counsel against the petition of
 " the constables objecting to the constables proceeding on their petition, for that the question
 " who was the returning officer is a matter of
 " private property triable at law; and that this
 " House never took upon them to determine
 " such a question;" the counsel were ordered to withdraw, and then being called in, were acquainted by the Speaker, by order of the House,

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decide who
is returning
officer.

Ib. p. 592.

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decide who
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officer.



“ That this House will not suffer them to dispute the privileges of the House.” The House then went on, and at last resolved, that the constables of this borough are the proper officers to whom the precept for electing burgesses to serve in parliament for this borough ought to be delivered, and to whom the execution of the said precept doth belong. The merits of the petition of Thomas Gage, and Samuel Edwin, esquires, against the election of the members returned by the indenture signed by John Jones, and others of the burgesses, were proceeded on at a future day.

19 Journ.
p. 704.

Ib. 705.

Minehead, Jan. 8, 1721. The constables petitioned the House against a return, because the sheriff had delivered the precept for the election to John Viccary and Joseph Sherry, not being the constables, and had accepted their return, and refused that of the petitioners, in defiance of the above resolution. On the 9th of January, after proving the appointment of the petitioners to be constables, by an entry in the court rolls of the manor, and reading the resolution of the 13th of June, 1717, the clerk of the crown was ordered to take off from the file the indenture sent by Viccary and Sherry, and annex that which had been signed and tendered by the constables. The House further resolved, That John Viccary and Joseph Sherry, having presumed to act as returning

returning officers at the late election of a burges to serve in this present parliament for this borough, in defiance of a resolution of this House, are guilty of a high crime and misdemeanour, and ordered them into custody of the serjeant at arms; and Henry Stroude, esquire, late high-sheriff of the county of Somerset, Mr. Day, his under-sheriff, and others, were ordered to attend. On the 23d, the messenger reported that Mr. Stroude was in bed, and infirm, and by reason of his age and infirmity unable to travel; and the county clerk was called in and examined, and at last, after examining Mr. Day, and the constables, it was resolved, That — Day, late under-sheriff for the county of Somerset, having delivered the sheriff's precept for electing a burges to serve in parliament for this borough to John Viccary and Joseph Sherry, two of the burgeses for the said borough, but not constables thereof, is guilty of a breach of trust, and contempt of the authority of this House, and he was ordered into custody of the serjeant at arms.

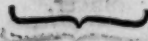
Commons
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officer.

19 Journ. p.
726.

Milborne Port, in 1775. The constitution of the borough has been stated before; and at this time part of the nine bailiwicks, into which it is divided, belonged to Mr. Medlicott, and part to Mr. Walter. In the year 1773, Medlycott had the appointment of one of the sub-bailiffs, Walter of the other; Medlycott

i. Dougl.
p. 1.


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nominated Elias Oliver, Walter nominated Robert Baunton. In 1774, it was Medlycott's turn to nominate both the sub bailiffs. It appeared that the court-leet for appointing sub-bailiffs had always been holden, both before and since the style was altered, on the first Tuesday after Pack-monday fair, held at Sherborne, in Dorsetshire, on the first Monday after Michaelmas day, which is called Pack-monday. On the third of October, 1774, the precept for the election was delivered to Robert Baunton, who gave his receipt for it, and he and Oliver concurred in appointing the 10th for the day of election. On the fourth (being the first Tuesday in October, N. S.) Oliver, with Medlycott and others, broke into the town-hall, and nominated the capital reigning bailiffs for the year ensuing, who appointed John Newton, junior, and John Peckham, to be their sub-bailiffs; at the same time Oliver was appointed a constable, and sworn into office. On the 10th the election came on, and there were three polls taken, one by Baunton, who returned Walter and Brown; one by Oliver; and a third by Newton and Peckham; by each of the two last Luttrell and Wolfeley were returned. Whether Newton and Peckham were the legal returning officers depended much on the validity of the court leet, holden on the 4th of October, which was objected to as not regularly held according

according to the statute for altering the style, and as being held fraudulently, and so void. But it was further argued, that if their appointment was regular, yet that the two former sub-bailiffs, being the returning officers when the precept was delivered, and one of them having received and given his receipt for it, they were the only persons competent to make the return, according to the 7 and 8 W. III. c. 25. s. 1. To this it was answered, that the object of the act was only to fix who should execute the precept where there were different persons claiming to be returning officers, but that here the new officer is in the eye of the law the same officer as the old one, and that many instances of this kind had occurred since that act passed, but no dispute had ever arisen about it, even when elections had been contested. If the appointment of Newton and Peckham was void, then it was material to examine into the respective rights of Oliver and Baunton to make the return. To Oliver it was objected, that by accepting the office of constable, he had abdicated the office of sub-bailiff, which it was proved had never been known to be held by the same person at the same time. To this was answered, that the offices were not incompatible; that he had only acted as a man doubtful of the law; and if after he was appointed constable he had refused to act, he might have been in-

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dicted; and that if the court leet held on the 4th was void, he never was appointed constable, but remained in his former office of sub-bailiff; and if his return was bad, Baunton's must be bad also, and both must be void. The committee resolved, "That the return made by John
" Newton, junior, and John Peckham, of Mr.
" Luttrell and Mr. Wolseley, was an illegal re-
" turn; and that the other two returns appeared
" to the committee to be so complicated toge-
" ther, that they thought it their duty to go upon
" the merits of the election, without previously
" deciding between them." The committee accordingly examined the merits of the election, and at length resolved, first, that Walter, and then that Browne, was not duly returned; then that Mr. Luttrell was duly returned "*by the*
" *return executed by Elias Oliver,*" and the same with respect to Mr. Wolseley; and they decided also in favour of their election.

Questions concerning the competency of returning officers, claiming to be such by virtue of charters of incorporation, have arisen more frequently than respecting officers at the common law.

Truro, 2d of February, 1688. There was a double return; and Colonel Birch reported from the committee, "That Henry Slade, at the
" time

“ time of the election of burgesſes to ſerve in
“ this preſent convention for the borough of
“ Truro, in the county of Cornwall, in purſu-
“ ance of his Highneſs the Prince of Orange’s
“ letter, was the proper officer who had right
“ to make return of burgesſes to ſerve for the
“ ſaid borough;” and the Houſe agreed.

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decide who
is returning
officer.

Plympton, 27th of October, 1691. The pe-
tition of Richard Strode, eſquire, complains
that “ one John Tozer having, by indirect
“ means, gained the precept, and uſurping the
“ office of mayor, and thereby the execution of
“ the precept, though he lived two miles from
“ the borough, and was not legally qualified,
“ nor choſen to be mayor,” threatened the peti-
tioner’s voters, reſuſed their votes, &c.

Ib. p. 540.

Banbury, 13th of March, 1700. At the time
of election, and for two years before, there had
been two contending mayors, and which was
the proper officer to make the return, was the
queſtion before the committee, for they had both
made returns. It was agreed, that Mr. Thorp
was mayor of Banbury, and died before his
year was up, on the 25th of February, 1698;
and the diſpute was, who was his ſucceſſor.
Charters, bye-laws, and living witneſſes were pro-
duced; the committee examined into the rights
of the different parties, and at laſt reſolved, that
Charles North, eſquire, was duly elected; to
which

13 Journ.
p. 402.

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decide who
is returning
officer.

13 Journ.
p. 426.

which the House agreed, by a considerable majority, the numbers being 211 to 111.

Orford, 25th of March, 1701. The petition alledged, that the high sheriff of Suffolk, "with
" an intention to make a false return, delivered
" his precept to one John Saunders, to whom
" the execution thereof did not belong; which
" the said sheriff and Saunders well knew
" by a solemn trial at bar, in Michaelmas term
" last." It appeared, that previous to the election notice was given to the high sheriff that a Mr. Hastings was mayor of Orford, and expected the precept, and to Saunders not to meddle with the precept; and a copy of a verdict in a trial at bar against one John Morgan, in which it was proved the question was, whether Morgan was the real mayor, was left with each of them. It was further proved, that Hastings demanded the precept from Saunders, but he refused to deliver it. Saunders gave notice of the day of election, and at the time appointed went to the town-hall, and then the fitting members were elected; and when Saunders and his friends were come out of the town-hall, Hastings, and several of the freemen, went into it, and elected the petitioners. "The petitioners counsel insisted, that they could make
" it appear that John Saunders was not the
" lawful mayor, the said Saunders claiming un-
" der

“ der Morgan. To which point the committee
“ did not think fit to hear them. But it not
“ being pretended that public notice had been
“ given of the said election by Hastings, neither
“ ever had he the precept; and it also appear-
“ ing that no person protested against Saun-
“ ders’s proceedings while he was in the town-
“ hall, or any one demanded a poll of him;”
the committee resolved, that the sitting members
were duly elected; and the House (after a mo-
tion to re-commit the merits of the election had
been negatived) agreed.

Commons
decide who
is returning
officer.

Dartmouth, 28th of May, 1701. There were, 13 Journ.
at the time of the election, two persons pre- P. 581.
tending to the office of mayor; viz. Mr. Floud
and Mr. Bully.

The mayor enters upon his office on the
Monday after Michaelmas. Mr. Floud, from
the said day, had kept the town courts, had
the mayor’s seat in the church; and the other,
Mr. Bully, had the seal and maces of the
corporation. The precept was delivered to
Mr. Bully, which was afterwards demanded by
Mr. Floud, and denied him by Bully, who
after gave notice of the election, and went
at the time appointed to the town-hall, which
he found Mr. Floud in possession of; where-
upon he adjourned to Bescone, and proceeded
to

Commons
decide who
is returning
officer.

to election in that place, whither Mr. Floud followed him, and two polls were taken, one by each of the reputed mayors; and Mr. Bully sent an indenture to the sheriff, importing, that the sitting members were duly elected. Both these were sent up by the under-sheriff to Mr. Granger, who acted for him in London, with direction to him to advise upon it if he did see occasion; and Mr. Granger offered the petitioners to return both, if they thought fit; but they not agreeing thereto, Mr. Granger returned the indenture sent to the sheriff by Mr. Floud, upon which the sitting members were returned to the House. The committee went into the merits of the election, and determined the sitting members to be duly elected, without making any resolution on the right of either of the contending parties to be the returning officer.

16 Journ.
p. 22.

“ Devizes, 27th of November, 1708. A
“ petition of Thomas Webb, serjeant at law,
“ on the behalf of himself and others, being the
“ majority of the common council of the bo-
“ rough incorporate of the Devizes, in the
“ county of Wilts, was read, setting forth, that
“ the right of electing burgesses to serve in par-
“ liament for the said borough, is only in the
“ mayor and burgesses; that a writ issuing to
“ the high sheriff, for chusing two members to
“ serve

“ serve in this parliament for the said borough,
 “ Josiah Difton, a Blackwell-hall factor, pre-
 “ vailed upon Robert Payne, gentleman, the
 “ under-sheriff, to deliver his precept to John
 “ Eyles, esquire, as mayor of the said borough
 “ (although Mr. Eyles was not mayor, nor so
 “ much as a member of the body corporate,
 “ there being at that time no mayor) who, at
 “ the instigation of the said Mr. Difton, un-
 “ dertook, and did execute the said precept, and
 “ hath returned Paul Methwen, esquire, and the
 “ said Mr. Difton, to serve as members in parlia-
 “ ment for the said borough, though they were
 “ not legally chosen; that the petitioner is, and,
 “ when the precept was executed was, recorder
 “ of the said borough, and one of the common
 “ council, and, as recorder, is (by the charter
 “ of the said borough) the chief officer in the
 “ vacancy of a mayor; and that he and others
 “ of the common-council, making a majority
 “ thereof (before the said John Eyles executed
 “ the said precept) sent to forbid the same, and
 “ demanded the precept, and, for the reasons
 “ aforesaid, not only *refused to attend, and give*
 “ *their votes, but sent a protestation in writing*
 “ *against his proceedings*; and therefore the said
 “ borough is not duly represented in this parlia-
 “ ment.” This petition was ordered to be heard
 at the bar of the House on the 28th of April next,

but

Commons
 decide who
 is returning
 officer.

Commons
decide who
is returning
officer.

16 Journ.
P. 97.

but in the mean time parliament was prorogued, and it was not renewed.

Bewdley, 8th of February, 1708. After the merits of the election had been heard at the bar of the House, the question was put, "That Thomas Smith, who was about Michaelmas, 1707, chosen bailiff of the borough of Bewdley, and against whom an information in the nature of a *quo warranto* was brought, and judgment given for him thereupon, was rightful bailiff of the said borough at the time of the election of a burgeses to serve in this present parliament," and negatived, 211 to 132; and then it was resolved, "that Thomas Slade, nominated bailiff of the borough of Bewdley, by a charter granted by her majesty, for maintaining the peace and good government of the said borough, was rightful bailiff of the said borough at the time of the election of a burgeses to serve in this present parliament."

Ib. p. 408.

December the 1st, 1710. The same question was again agitated, and the point to be decided was, whether one Joseph Tindal, bailiff under the new charter, or one John Rock, bailiff under the ancient charter, was the legal returning officer. The high sheriff for the county sent his precept to Tindal, though Rock had given the sheriff notice that he was bailiff, and the proper officer to make the return. Rock being in-

§

formed

formed the precept was sent to Tindal, caused public proclamation to be made on the 6th of October, that the election would be on the 11th of October, when the petitioner, Salway Winnington, was unanimously elected; and by indenture under their common seal he was returned to the sheriff, who refused to accept the return. Ninth of December, the House resolved, that Rock was rightful bailiff of this borough at the time of the election; and that Mr. Winnington was duly elected.

Commons
decide who
is returning
officer.

16 Journ.
P. 439.

It appears, in 1715, that the contest was renewed, on a return made by one Nicholas Ward, claiming to be bailiff under the new charter; and Mr. Winnington, who was returned again by Rock as bailiff under the old charter, and the bailiff and burgeses under that charter petitioned on the 30th of March, but on the 24th of May their petitions were withdrawn.

18 Journ.
P. 32.

Ib. p. 135.

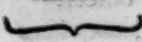
Camelford, 8th of May, 1711. One question was, whether Mr. Edward Cloake or Mr. Godfrey White was the legal mayor, and ought to make the return. The committee resolved, that it was their opinion, that Mr. Edward Cloake was legal mayor, and ought to make the return.

16 Journ.
P. 644.

Oakhampton, 1791. The question upon the return depended on, whether the mayor or portreeve was the legal returning officer. The first statement made by virtue of the 28 Geo. III.

1 Fraser,
p. 69.

Commons
decide who
is returning
officer.



c. 52. on one side was, that the mayor chosen by the capital and assistant burgesses of the borough according to its charter; on the other, that the portreeve for the time being was the returning officer. And the committee resolved (probably because it thought the petitioners had in their petitions admitted the portreeve to have been legally chosen) that they did not think it necessary to state the right of chusing, nominating, and appointing the portreeve: afterwards, however, both sides were required to state the right of chusing, nominating, or appointing the returning officer, for which they respectively contended, because the merits of the election in some degree depended upon it. Both parties gave in statements in the same words as at first; and the committee determined, that, upon the last-mentioned statements delivered in, the portreeve is not, and the mayor is, the returning officer of this borough; and the candidates returned by the mayor were declared duly returned and elected.

Returning
officer not an
elector.

From the cases of Bletchingly and Old Sarum, before cited, it appears that the house of commons was at one period disposed to hold, that none could preside at an election who was not himself an elector; and rather than that should be permitted in the case of Bletchingly,
it

it was decided, that the precept should be delivered to some one of the electors, and he might give notice to the rest of the time of election. In the case of Old Sarum, it was disputed, whether the bailiff ought to preside; but in both these boroughs the bailiffs have, in fact, presided at subsequent elections; and the 7 and 8 W. III. c. 25. s. 21. by requiring that the precept shall be delivered to the proper officer "to whom the execution of such precept doth belong or appertain, and to no other person whatsoever," implies that there must be some known returning officer in every parliamentary district.

Returning officer not an elector.

The duty of the returning officer does not make it necessary that he himself should have a right to vote; the writ or precept is the foundation of his authority, and all that is thereby required is, that he shall *cause to be elected* a representative to serve in parliament for the place over which he presides, and to make known how he has executed the writ or precept; so that when he has computed the votes, and made his return, his duty is performed.

Numerous instances might be produced of boroughs, besides those of Bletchingly and Old Sarum before mentioned, where the returning officer has no vote himself, and his duty at the election is, to take the suffrages of others, and

G

return

Returning
officer not
an elector.

p. 20, 21.

return the candidate who has the majority. Such must be the case at every election, where it is the duty of a corporate officer to preside, and the right of voting does not depend on corporate franchises, as at Reading, Abingdon, and many other places, unless there should happen to be an exception in his favour, founded on immemorial usage, or expressly made by the charter. Anciently, the sheriff directed his precept to the principal municipal officer of every borough, whoever he might be, whether the original common law officer, as constable or bailiff, or through royal favour dignified with the title of mayor, alderman, &c. Thus, in the cases of Aylesbury, Minehead, and others, the constables and bailiffs were the returning officers till they were superseded by a mayor or other corporate officer appointed by royal charter to preside over their respective districts; but when the corporate bodies, founded by those charters, were dissolved, the constables and bailiffs resumed, and still enjoy, their ancient rights. It may be observed, that in the boroughs just alluded to, the right of voting existed at the common law before charters of incorporation were granted, but where that right is founded merely on charter, it should seem, that so long as the corporate body has existence, and can continue itself, and provide for the

the government of the district over which its power was originally meant to extend, the loss of its head officer shall not authorize the sheriff to send his precept to the constable or bailiff, but it shall be delivered to the next existing corporate officer, according to his precedence. Thus at Durham, where for some years before the obtaining of its present charter there had not been a legal mayor, and the capacity of electing one in future was lost. And so at Helston, where, from the want of an integral part of the corporation, the magistracy of the borough having ceased, and the remaining corporators being disabled from either exercising the functions intended for its government, or supplying that integral part, the court of king's bench determined that it was dissolved, and that a new charter might be granted. The case of this latter borough (in 1790) will be stated in a subsequent chapter. The corporation were at last reduced to one surviving freeman, and he claimed solely to elect the two members, and act as returning officer also. There were two returns, one by him, and another by the mayor under the new charter. The ultimate decision, both on the merits of the return and election, was made on the ground, that the right of the ancient corporators had been transferred to the new ones.

Returning
officer not
an elector.

Rex v. Pass-
more, 3 Term.
Rep. B. R.
p. 199.

Attempt to
corrupt re-
turning
officers pu-
niftable.

27 Journ.
p. 290.

It is the constant practice of the house of commons to punish with great severity the partiality or corruption of the returning officer; and in like manner it will punish any attempt made to corrupt him. Milborne Port, 22d of April, 1755. "A complaint being made to the House, " that an undue attempt had been made to " influence the returning officer for this bo- " rough, in making a return of a member to " serve in parliament for the said borough, by " the offer of a sum of money to be deposited " for that purpose;" and a letter, signed Henry Robins, directed to Mr. Hallett, probably the returning officer, was produced and read, in which that deposit was offered for that purpose; but the House being informed, " that the said letter did not come till very " lately into the possession of the persons at whose " request the said complaint was made;" and that since the time that the said letter bears date, an offer of a sum of money, for the purpose mentioned in the said letter, had also been made to the said Mr. Hallett by three other persons, they, together with the said Henry Robins, were ordered to attend the House on that day fortnight. The House was prorogued three days afterwards, and the prosecution of these offenders dropped. Here it is observable, that

the complaint of the endeavour to corrupt the returning officer might, for any thing appearing on the Journals, originate with persons wholly strangers to the borough and its elections; it clearly was not made by the returning officer himself, nor any of the candidates; nor is there any thing to shew that it was set on foot by electors, or other persons interested in the due return of members.

Attempt to
corrupt re-
turning
officers pu-
nishable.

With a laudable jealousy of a practice, which tended to destroy the independence of returning officers, the legislature, in the ninth year of the reign of Queen Ann, reciting, that “whereas, “in divers counties, boroughs, towns corporate, “and cinque ports, where the mayor, bailiff, or “other officer or officers, to whom it belongs to “preside at the election, and make return of “any member to serve in parliament, ought to “be annually elected, the same person hath “been re-elected into such office for several “years successively, which hath been found inconvenient;” enacted, “that no person or “persons, who hath been or shall be in such “annual office for one whole year, shall be capable to be chosen into the same office for “the year immediately ensuing; and where any “such annual officer or officers is or are to continue for a year, and until some other person

No annual
returning of-
ficer to be
re-elected.

No annual
returning
officer to be
re-elected.

“ or persons shall be chosen, and sworn into
“ such office, if any such officer or officers shall
“ voluntarily and unlawfully obstruct and pre-
“ vent the chusing another person or persons to
“ succeed into such office at the time appointed
“ for making another choice, shall forfeit one
“ hundred pounds for every such offence, to
“ be recovered, with costs of suit, by such per-
“ son as will sue for the same in any of her
“ majesty’s courts of record before menti-
“ oned, (a) by action of debt, bill, plaint, or
“ information, wherein no essoin, protection, or
“ wager of law, shall be allowed, nor any more
“ than one imparlance; one moiety thereof to
“ her majesty, her heirs, and successors, and the
“ other moiety to him or them that will sue for
“ the same.”

(a) The courts before mentioned in this act, and here
alluded to, are the court of queen’s bench, the courts of
sessions of counties palatine, and the courts of grand sessions
in Wales.

CHAP. III.

OF THE CARRIAGE AND DELIVERY OF THE
WRIT OF SUMMONS.

THE writs of summons are directed respectively to the sheriffs of counties; the chancellor of the duchy of Lancaster; the bishop of the county palatine of Durham, or his temporal chancellor; the chamberlain of the county palatine of Chester, his lieutenant, or deputy; the lord-warden of the cinque ports, or his deputy; and the returning officer or officers of the cities and boroughs being counties of themselves.

By whom
conveyed.

The form of the writ, which goes to the sheriffs of the several counties of England and Wales, may be seen in the first volume of this work, and the other writs do not vary, except in the formal parts. These writs appear to have been issued, from the most early times, by the clerk of the crown in the court of chancery; but the mode of conveying them to the sheriffs,

p. 1.

By whom
conveyed.

1 Journ.
p. 893.

or other officers, seems not to have been settled till after the restoration. In the case of Hertford, 7th of May, 1628, is the following entry: "Ordered, the writ for a new election of a burges at Hertford, to be by Mr. Spencer forthwith sent down for an election to be there made; or else, that he forthwith deliver the same unto the knights of the county of Hertford, or one of them, that they may take order for the present sending down thereof accordingly."

It is probable from the following case, and that of Brecon county, 22d of November, 1661, which will be stated presently, that it was usual for the clerk of the crown to deliver the writ to the person who produced the warrant for making it out.

8 Journ.
p. 88.

Ludgershall, 12th of July, 1660. Upon miscarriage of the writ formerly issued, the committee reported, that the clerk of the crown delivered the writ to the person that brought the warrant, but no notice was taken of his name. The House passed no censure upon the clerk of the crown, but ordered a new writ, and desired the lord chancellor to supersede the former one.

The discretionary power thus left with the clerk of the crown was frequently abused to answer the views of candidates, but the House seems not,

not, till of late years, to have been strict in enquiring after, or severe in punishing delays. In the case of Milborne Port, 13th of August, 1660, it was ordered, that Mr. Henry Milborne be summoned to answer the misdemeanor with which he was charged, in taking from the clerk of the crown the writ, and keeping the same unexecuted, whereby the House was deprived of a member to serve for the said borough.

By whom conveyed.

8 Journ.
p. 118.

Wigan, 3d of September, 1660. The House being informed, that a writ for a new election for this borough was delivered by the clerk of the crown to one Mr. Stoughton, who detained the same in his hands, whereby the execution thereof was delayed, and the House deprived of a member, that writ was ordered to be superseded by the lord chancellor and the chancellor of the dutchy respectively, and another to be issued.

Ib. p. 146.

Brecon county, 22d of November, 1661. Serjeant Charlton reported from the committee of privileges, as to the business of suppressing the writ, that the clerk of the crown did, on the 14th of August last, receive Mr. Speaker's warrant for issuing of the writ by the hands of Colonel Jefferyes, to whom he delivered it the next day; and that the writ was now delivered

Ib. p. 317.

to

By whom
conveyed.

to the sheriff, and the election to be on Wednesday next.

The House seem to have been satisfied with this report, but "Ordered, that for the future, " when any writ shall be delivered, the party " that doth receive the writ shall deliver, or " cause the same *forthwith* to be sent, to the " proper officer of the place for which the election is to be made."

8 Journ.
p. 436.

February 18th, 1662. Ordered, " That the " lord chancellor be desired by Mr. Speaker, to " take care, when any writ shall be sealed for " a new election of any member to serve in " parliament, that such writ be forthwith sent " and delivered to the proper officer of the place " for which the election is to be made."

Ib. p. 488.

January 25th, 1664. The House being informed, that some writs heretofore issued for electing new members to serve in parliament, have miscarried, Ordered, that Mr. Speaker do attend the lord high chancellor of England, and desire him, that he would be pleased to give order, that when any writs for electing new members are sealed, the same be delivered to the proper officer for executing such writs, or in case he be not in town, then to one of the knights that serve for the county into which the writ shall issue.

Tamworth,

Tamworth, 22d of November, 1669. Upon a complaint of some neglect or miscarriage committed by Mr. Serjeant Flint, a member of the House, in detaining in his hands the writ for electing a member to serve for this town, whereby the election had been delayed, a witness was examined; and the House being of opinion that there was a miscarriage in this matter by the said Mr. Serjeant Flint, he was reprimanded by the Speaker, by command of the House, for the same, and excused.

By whom
conveyed.
9 Journ.
p. 111.

April 13th, 1675. It was ordered at the beginning of the session, "That Mr. Speaker do give order to the clerk of the crown to take care that the writs for the election of new members be delivered to the sheriff, or proper officer."

Ib. p. 316.

October 21st, 1678. At the beginning of the session it was ordered, "That Mr. Speaker be desired to give notice to the clerk of the crown to take care that the writs for the new election be delivered to the hands of the high sheriffs of the respective counties; and that the House do expect an account thereof."

Ib. p. 517.

October 31st, 1678. The clerk of the crown being called in to give an account to the House, touching the writs for electing new members, acquainted the House, that he delivered the writs

Ib. p. 524.

to

By whom
conveyed.

to Mr. Harris, servant to my lord chancellor, to be sealed; and that he shewed him the order of the House, and demanded of him to have the writs again, when they were sealed; and that Mr. Harris told him, that my lord chancellor would take care to see the writs delivered. The House then appointed a committee to enquire into the delays of issuing forth and sending down the writs for electing of new members. But no report appears in the Journals.

11 Journ.
p. 50.

January 8th, 1693. Ordered, that the clerk of the crown do take care that the writ for electing of a burghers to serve in this present parliament for the borough of Wigan, in the county of Lancaster, be, without further delay, sealed tomorrow, and be immediately after sent to the chancellor of the county palatine of Lancaster.

Ib. p. 184.

Cardiganshire, 7th of December, 1694. Upon complaint that the writ was not delivered to the sheriff, it was resolved, "That all the writs for
" the electing of members to serve in parliament be immediately sent to the proper
" officers for execution thereof, with all convenient speed."

In the foregoing orders and resolutions, it is observable, that the clerk of the crown is generally considered as responsible for the due delivery of the writs; but from about the beginning of the present century, it has been the duty of the

the messenger attending the great seal, an officer whose name does not occur before upon the Journals, to convey and deliver them. But as it would be impossible for him to deliver all the writs made out for a new parliament in person, he has generally acted by deputy in the conveyance; and the only restriction laid upon him by the house of commons, in the choice of a deputy, seems to have been, that he should not transmit it by a candidate.

By whom
conveyed.

Westmoreland, 11th of December, 1704. On complaint that there had been some indirect practices in sending down the writ for electing a knight of the shire for this county, the clerk of the crown and the messenger were ordered to attend. 12th of December they attended. It appeared, that the writ had been made out on the 25th of October preceding; and the messenger in his defence said, that he received it on the 26th, and being informed there was no contest, he delivered the same to one Mr. Ridley, who promised it should be delivered to the sheriff; that he delivered it to Sir Richard Sandford the same 26th of October, and he had been informed it was delivered to the sheriff on the 3d of November; and begged pardon of the House if he had done any thing amiss. Whereupon it was resolved, "That Mr Robert

14 Journ.
P. 453.

Ib. p. 454.

"Briscoe, the messenger, is guilty of a crime,
" in

By whom
conveyed.

“ in suffering the writ for electing a knight of
“ the shire for the county of Westmoreland, to
“ come into the hands of a candidate before it
“ came to the proper officers;” and he was
ordered into custody of the serjeant at arms,
and at a subsequent day reprimanded, and dis-
charged.

19 Journ.
p. 695, 697.

Minehead, 16th of December, 1721. On
complaint that the writ had issued long since,
but had not been delivered to the sheriff, the
messenger attending the great seal was ordered
to attend. Robert Briscoe, the messenger, ac-
cordingly attended, and declared, that he deli-
vered the writ to Thomas Parker on the 30th
of November, who gave a receipt, which was
produced, by which he promised to deliver it
to the sheriff with all convenient speed. Parker
being examined, said, he delivered it to one
John Fox on the 1st of December, who pro-
mised to deliver it to the sheriff. On the 11th
January, Fox attended, was examined, and it
was resolved, that he, being employed to carry
the writ, had been guilty of a breach of trust in
delivering the same to a candidate; and he was
ordered into custody of the serjeant at arms;
but on a subsequent day (18th of January) a
question being put, that John Wills, esquire,
was guilty of a crime in *having caused* the writ
to be delivered to a candidate, it passed in the

Ib. p. 709.

Ib. p. 717.

negative;

negative; and a question, that Sir Richard Lane, being a candidate, was guilty of a crime in *receiving and detaining the writ*, it passed in the negative, 110 to 71. Upon his petition, and expressing sorrow for his offence, Fox was afterwards reprimanded, and discharged.

By whom
conveyed.

19 Journ.
P. 735.

The next object of the messenger's attention is, that the writ shall be delivered *to the proper officer*; for by the 7 and 8 W. III. c. 25. s. 1. it is enacted, "That as well upon the
" calling or summoning any new parliament, as
" also in case of any vacancy during this present or any future parliament, the several writs
" shall be delivered *to the proper officer to whom the*
" *execution thereof shall properly belong or appertain,*
" and to no other person whatsoever." There is no penalty inflicted for breach of this provision of the act, but the House have punished persons who have delivered writs to improper persons.

To whom
delivered.

I have already cited the case of Westmoreland, 11th of December, 1704; and in the case of King's Lynn, 29th of March, 1712, complaint was made to the House, that although a warrant for a new writ was ordered the 6th instant to issue, and that the warrant issued the next day, and the writ was soon after sealed and delivered to Mr. Briscoe, the messenger attending the great seal;

17 Journ.
P. 159.

To whom
delivered.

17 Journ.
p. 164.

seal; yet that the precept for the election was not brought to the borough the 26th instant, in prejudice of the borough, and of the right of election. Mr. Briscoe was ordered to attend on Monday morning, to give an account what was become of the said writ.—31st of March, he attended, and was examined; the account he gave was, “That the writ was sealed the 10th instant; and that upon the recommendation of some gentlemen, who said they knew one Mr. Cremer, an attorney of that country, and a man of business, who was going down, he delivered the writ to him the 12th instant, who promised to deliver the same to the sheriff the 17th; and that it was not intended to be delivered sooner, to avoid the confusion of having the assizes and the election together; that Mr. Cremer had acquainted him by letter, that he was to enquire for the high sheriff at Norwich, but he was gone into Cambridgeshire, and that the under-sheriff was gone into Suffolk. He confessed, that Mr. Cremer was not the sheriff’s deputy; and that he did not take any receipt from him for the writ, as he does not from those he intrusts to deliver writs to sheriffs, who are to take receipts themselves from the sheriffs.” He was then ordered to withdraw—and the first session of the 7th and 8th of

of William, and that part of the Journal of the 11th December, (a) 1704, which related to him in another case, being read, it was resolved, that Mr. Robert Briscoe, having received the writ, and having not delivered the same to the proper officer, is guilty of a neglect of his duty, in prejudice of the said borough and of the right of election, and he was ordered into custody; 11th April, he petitioned for his release, and, 12th April, was reprimanded and discharged, paying his fees.

To whom
delivered.

17 Journ.
P. 181. 182.

We have seen that the messenger attending the great seal had the power of assisting a candidate, by the appointment of one of his friends to convey and deliver the writ, and as there was no precise time fixed by law for the delivery, might sometimes render essential service to a favourite cause; but the House would, in cases of great delay, punish the messenger or his deputy.

Proceedings
in case of
delay.

Cockermouth, 4th of July, 1717. A complaint being made to the House, that the writ for the electing of a burghers for Cockermouth had not been delivered to the sheriff of the county, the clerk of the crown, and Mr. Robert Briscoe, the messenger to whom the writ was

18 Journ.
P. 618.

(a) Misprinted in the Journals the 2d December.

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delivered,

Proceedings
in case of
delay.

delivered, were ordered to attend, and examined. A debate taking place, it was adjourned to Tuesday, and the messenger ordered to attend, but the parliament was prorogued the day preceding.

21 Journ.
p. 158.

Chester, Salop, Caernarvon, Anglesea, Montgomery, and Denbigh counties, 9th of May, 1728. Complaint being made, that there had been some undue practice in the delivery of several of the writs for electing members to serve in this present parliament, particularly those for these counties, Mr. Robert Briscoe, messenger attending the great seal, was ordered to attend; 9th May he attended, but the enquiry was put off for a fortnight (150 to 90) and it was ordered that a bill be brought in for making more effectual the provision made by law for the due delivery of writs for electing members to serve in parliament. 24th May, he attended, and with the clerk of the crown was ordered to attend on that day sevensnight; but parliament was prorogued in the mean time.

Ib. p. 159.

Ib. p. 161.
172.

This bill was accordingly brought in on the 11th of May, and pushed on with such uncommon rapidity, that it passed the House of Commons, and was sent up to the Lords on the 21st, but was lost by the prorogation just mentioned.

Ib. p. 407.

28. Cardigan, 21st of January, 1729. Notice being taken in the House, that there had been
great

great delay in the execution and return of the writ, which was ordered in the last session to be made out, Mr. Robert Briscoe, the messenger attending the great seal, the mayor, and high sheriff, were ordered to attend on Tuesday the 10th of March.—10th March, they all attended, and were examined, but nothing further was done.

Proceedings
in case of
delay.

21 Journ.
p. 489.

Monmouthshire, 11th of February, 1772. Complaint being made to the House of a delay in the execution of the writ issued during the last recess, the deputy clerk of the crown, Mr. Harmood, the messenger attending the great seal, and Mr. Samuel Long, were ordered to attend. On the 19th February they attended; the writ and return were read, and the two latter were examined; and Samuel Long, having informed the House, that the writ was taken from him by Valentine Morris, esquire, (who had been a candidate at the last election, but is not stated to have been one in the Journals) before he could deliver it to the sheriff of the county; and it appearing by the receipt of the sheriff, indorsed upon the writ, that, though issued on the 4th day of June, it was not delivered to him till the 21st of that month, it was ordered, that Valentine Morris, esquire, should attend on the 28th of February, to give an account to the House of his having taken the writ for the last election from the messenger sent down to deliver the said

33 Journ.
468.

Ib. 488.

Proceedings
in case of
delay.

33 Journ.
489.

Ib. 536.

writ to the sheriff, and of the delay of the execution of the said writ; and the deputy clerk of the crown with the writ, and the messenger, and Mr. Samuel Long, were ordered to attend at the same time. 19th February, copy of minutes of the evidence was ordered to be sent to Mr. Morris. 28th February, Mr. Morris attended, and "acknowledged that the writ came into his hands on the 5th of June last, and was not delivered to the sheriff till the 21st of the same month; but assured the House, that he did not take the writ from the messenger by force, but that the said messenger did freely deliver the same to him; that when he took the writ, he did not mean thereby to delay the election; but some doubt arising with respect to the place of election, and whether the county court might not be held at Monmouth, which he much wished, fearing there would not be a fair election at Newport, that he sent several expresses to London for the opinion of counsel, which delayed the delivery of the writ; and that the said delay had been very detrimental to his interest at the time of the election; and added, that no person was blameable for any part of this transaction but himself, and Samuel Long, the messenger." After the previous question had been proposed, and withdrawn, it was resolved, that

that Valentine Morris, esquire, having taken the writ from the messenger, who was sent down to deliver the same to the sheriff, and having delayed the delivery thereof for fifteen days, is thereby guilty of a violation of the law, and a breach of the privilege of this House; and then it was ordered, that the said Mr. Morris, having acknowledged his offence, and submitted himself to the House, be called in, and acquainted by Mr. Speaker, that the House, notwithstanding the greatness of the offence, taking notice of the very full and ingenuous manner in which he hath acknowledged the same, and expressed his concern for it, doth forbear to proceed any further against him, and that he be discharged from any further attendance on this House. He was called in, without the mace, and, standing at the bar, acquainted by Mr. Speaker with these resolutions, and directed to withdraw.

Proceedings
in case of
delay.

On the same day, leave was given to bring in a bill to explain, amend, and render more effectual the act of the 7th and 8th Will. III. c. 25. with respect to the delivery of writs for the electing of members to serve in parliament. This bill was afterwards read twice, and committed, but was lost, like that in 1728, by the subsequent prorogation of the parliament.

In the parliament just dissolved, a bill was brought into the House of Commons to amend

Proceedings
in case of
delay.

the law in this particular, under the title of “ a
 “ bill for the more expeditious and regular con-
 “ veyance of writs issued for the election of
 “ members to serve in parliament.” Its ob-
 “ ject may be seen from the following extract; it
 “ purported to enact, “ That when any new parlia-
 “ ment shall at any time hereafter be summoned
 “ or called, as also in all cases of vacancy during
 “ this present or any future parliament, the
 “ messenger or pursuivant of the court of chan-
 “ cery, or other person or persons whose duty
 “ it is to carry out and deliver, or who shall
 “ be entrusted with the carrying out and delivery,
 “ of any writ or writs for the election of mem-
 “ bers to serve in parliament, shall, after the re-
 “ ceipt thereof, forthwith and without delay
 “ carry such of the said writs as shall be directed
 “ to the sheriffs of London or sheriff of Mid-
 “ dlesex, to the respective offices of such sheriffs
 “ or sheriff, in London and Middlesex, and all
 “ such other writs to the general post office in
 “ London, and there deliver the same to the post-
 “ master or post-masters general for the time
 “ being, or to such other person or persons as
 “ the said post-master or post-masters general
 “ shall depute to receive the same, and which
 “ deputation they are hereby respectively re-
 “ quired to make, who, on receipt thereof,
 “ shall give an acknowledgment in writing of
 “ such

Proceedings
in case of
delay.

“ such receipt to the said messenger, pursuivant,
“ or other person or persons from whom the
“ same shall be received, expressing therein the
“ time of such delivery, and shall keep a dupli-
“ cate of such acknowledgment, signed by the
“ parties respectively to whom and by whom
“ the same shall be so delivered; and the said
“ post-master or post-masters general, or such
“ their deputy or deputies, shall dispatch all such
“ writs, free from the charges of postage (which
“ they are hereby authorized to do) by the first
“ post or mail after the receipt thereof, under
“ covers, respectively directed to the proper
“ officer or officers to whom the said writs shall
“ be respectively directed, and to no other per-
“ son whomsoever, accompanied with proper
“ directions to the post-master, or other person
“ or persons executing such office, of the town
“ or place, or nearest to the town or place,
“ where such officer or officers shall hold his or
“ their office, requiring such post-master, or
“ other person or persons executing such office,
“ forthwith to carry such writs respectively to
“ such office, and to deliver the same there to
“ such officer or officers to whom the same shall
“ be respectively directed, or to his or their de-
“ puty or deputies, who are hereby respectively
“ required to give to such post-master, or other
“ person or persons executing any such office, a me-

Proceedings
in case of
delay.

“ memorandum in writing, under his or their hand
“ or hands, acknowledging the receipt of every
“ such writ, and setting forth the day and hour
“ the same was delivered to such post-master,
“ or other person or persons executing such of-
“ fice, which memorandum shall also be signed
“ by such post-master, or other person or per-
“ sons executing such office, who are hereby re-
“ quired to transmit the same, by the first or
“ second post afterwards, to the said post-master
“ or post-masters general, or their respective
“ deputies, at the said general post office in Lon-
“ don, who are hereby required to make an
“ entry thereof in a proper book for that pur-
“ pose, and to file and keep such memorandum
“ along with the duplicate of the said acknow-
“ ledgment, signed by the said messenger as
“ aforesaid, to the intent that the same may be
“ inspected or produced upon all proper occa-
“ sions, by any person interested in such elec-
“ tions.”

This attempt, like the others which preceded it, proved abortive, and the bill, after having languished in the House for two sessions, and been read twice, was referred to a committee, which made no report before the prorogation.

It may naturally be asked, why so many efforts to remove a grievance very generally complained of should have proved ineffectual; and why, when

when even popular at their first introduction in the House of Commons, they should be permitted to die away for want of support. In every other case the legislature has fixed some limits to the corruption and partiality of public officers concerned in the transmission of the writ or precept, but the messenger attending the great seal is still entrusted with discretionary powers, and the proceedings of the House, above detailed, prove that he has not always exercised them in a manner to give universal satisfaction.

Proceedings
in case of
delay.

The House of Commons have occasionally, from a very early period, exercised the right of controuling the delivery of the writ, and directed it to be detained in the hands of the clerk of the crown, or, in the hands of the messenger attending the great seal.

Writ detained
by order.

In the year 1628, the House of Commons disputed the right of the lord keeper to make out writs to fill up vacancies in time of prorogation. This dispute arose upon a writ having been issued to elect a member in the place of Sir Charles Morison, deceased, for the borough of Hertford. Twenty-second January, it appeared, that the deputy clerk of the crown had delivered the writ to Sir Richard Wynne in the October preceding. *The clerk of the crown* was ordered to bring the writ into the House the next morning

1 Journ.
p. 921.

Writ detained by order.

1 Journ.
p. 921.

14 Journ.
p. 63.

30 Journ.
389.

Ib. 391.

ing (twenty-third of January); he did so, "and
" was directed to keep it in his custody till the
" further pleasure of the House should be known,
" and not to deliver it to any."

Tamworth, 1st December, 1703. The Journal states that,

" The House being informed, that there is a
" new writ issued only to the sheriff of the county of Stafford, for the electing a burges to serve in parliament for the borough of Tamworth, whereas the borough is also within the county of Warwick, Ordered, That the clerk of the crown do make out a supersedeas to the writ by him lately made out, and directed to the sheriff of the county of Stafford only, and that Mr. Speaker do issue his warrant to the clerk of the crown to make out a writ, directed to the sheriff of the county of Warwick, and another writ directed to the sheriff of the county of Stafford, for the electing a burges to serve in this present parliament for the said borough of Tamworth, in the room of the honourable Henry Thynn, esquire, who hath made his election to serve for the borough of Weymouth, in the county of Dorset."

Devizes, 29th April, 1765. A new writ was ordered in the room of William Wilby, esquire, deceased.—April 30. The House being informed, that by accounts received since the order

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was made, it was uncertain whether the said Mr. Wilby was dead at the time of making of the said order, and the Speaker having acquainted the House, that he had issued his warrant to the clerk of crown, that the writ was made out, and in the hands of the messenger of the great seal, and a motion being made that the clerk of the crown do make out a supersedeas to the said writ, the entry of Gloucester, 19 Dec. 1702, was read, and the motion withdrawn; and it was ordered, "that the messenger of the great seal do forbear the delivery of the writ, for and until the further order of the House."—6th of May. The House being informed, that William Wilby, esquire, was alive at the time the order was made for a new writ, the subsequent order was discharged, and the Speaker ordered to issue his warrant to the clerk of the crown to make out a supersedeas to the said writ. On the 24th May, a new writ was ordered in room of William Wilby, esquire, deceased.

Writ detained by order.

30 Journ.
P. 404.

Ib. 434.

This right to controul the delivery of the writ, at least in the hands of the messenger, it may be contended, would have been virtually given up by the House of Commons in the bill just mentioned, if it had passed into a law; for in the extract before given it is expressly required, that as soon as the person whose duty it is to deliver the writ, or who shall be entrusted with

Writ detained by order.

with the delivery of it, shall have received it, he shall, "forthwith and without delay," carry it to the respective officers. It would still be in the power of the Speaker, by order of the House, in case of any mistake, to detain the writ in the hands of the clerk of the crown, or to issue his warrant to supersede it while it remained there; but the instant it was delivered to any person to be conveyed to the offices, the House of Commons would have lost all controul, and it might be doubted whether, according to the provisions of the several statutes, it would not be necessary to proceed through all the forms of an election, before a new writ could be legally issued, even where the old one had been ordered by mistake.

C H A P. IV.

OF THE INTRODUCTION AND FORM OF THE
PRECEPT, AND OF THE MAKING, CONVEYING,
AND DELIVERING OF IT.

OF the period at which the commons were first represented in parliament something has been said already. The earliest writs now extant, in which the modern system of representation may be unequivocally traced, are dated in the 49th year of Hen. III. (1265.) The following is the entry on the roll:

*Henricus, Dei gratiâ, rex Angliæ, dominus Hi-
bernæ, et dux Aquitaniæ, venerabili in Christo
patri R. eadem gratia, episcopo Dunelmensi, salutem.
Cum post gravia turbationum discrimina dudum
habita in regno nostro, carissimus filius Edwardus
primogenitus noster, pro pace in regno nostro assecu-
randa et firmanda, obses traditus extitisset, et jam
sedata (benedictus Deus) turbatione prædicta, su-
per deliberatione ejusdem salubriter providendâ, et
plenâ securitate, et tranquillitate pacis, ad honorem
Dei, et utilitatem totius regni nostri, firmanda, et
totaliter*

Separate
writs to each
borough.

1 Rymer,
Fœd. p. 802.

Separate
writs to each
borough.

totaliter complenda, ac super quibusdam aliis regni nostri negotiis, quæ sine consilio vestro et aliorum prælatorum et magnatum nostrorum nolumus expediri, cum eisdem tractatum habere nos oporteat. Vobis mandamus, rogantes in fide et dilectione, quibus nobis tenemini, quod omni occasione postposita et negotiis aliis prætermiſſis, sitis ad nos London. in octabis sancti Hillarii proximo futuris; nobiscum, et cum prædictis prælatis et magnatibus nostris, quos ibidem vocari fecimus, super præmissis tractaturi, et consilium impensuri; et hoc sicut nos et honorem nostrum et vestrum, nec non et communem regni nostri tranquillitatem diligitis nullatenus omittatis. Teste rege apud Wigorniam, 14 die Decembris.

Writs in a similar form issued to many other ecclesiastics named in the roll; and on the 24th of December following it appears, that writs, dated at Woodstock, were sent to others, and also to some temporal lords, and then comes this entry.

Item mondatum est singulis vicecomitibus per Angliam, quod venire faciant duos milites de legalioribus, probioribus, et discretioribus militibus singulorum comitatuum, ad regem London, in octab. prædictis, in forma supradicta.

Item in formâ prædictâ scribitur civibus Ebor. civibus Lincoln. et cæteris burgis Angliæ, quod mittant in formâ prædictâ duos de discretioribus, legalioribus, et probioribus, tam civibus, quam burgenſibus suis.

Item

Of the Form of the Precept, &c.

III

Item in formâ prædictâ mandatum est baronibus, et probis hominibus quinque portuum, prout continetur in Brevi irrotulato inferius.

Separate
writs to each
borough.

The writ here referred to has been preserved by Prynn: *Rex baronibus et ballivis portus sui de Sandwich, salutem. Cum prelati et nobiles regni nostri tam pro negotio liberationis Edwardi primogeniti nostri, quam pro aliis communitate regni nostri tangentibus, ad instans parliamentum nostrum quod erit London in octab. Sancti Hillarii convocari fecimus, ubi vestra sicut et aliorum fidelium nostrorum præsentia plurimum indigemus, vobis mandamus in fide, et delectione quibus nobis tenemini firmiter injungentes, omnibus aliis prætermisissis, mittatis ad nos ibidem quatuor de legalioribus et discretioribus portus vestris, ita quod sint ibid. in octab. prædictis nobiscum et cum præfatis magnatibus regni nostri tractatur, et super præmissis consilium impensuri. Et hoc sicut honorem nostrum et vestrum, et communem utilitatem regni nostri diligitis, nullatenus omittatis. Teste rege apud Westm. 20 die Januar.*

3 Prynn,
P. 242.

Similiter mandatum est singulis portibus pro se.

The form of the writ itself, as well as the moment in which it was issued, when the king was actually a prisoner in the hands of Simon de Mountfort and the rebellious barons, naturally raises a suspicion of the regularity of these proceedings, and prevents a reliance on any arguments drawn from this writ, as evidence of
ancient

Separate
writs to each
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ancient usage; but the list of persons summoned evidently shews, that the assembly could not be properly denominated a parliament; for though writs were sent to the archbishop of York, and the bishops of Durham and Carlisle, in his province, yet they were sent only to the bishops of London, Winchester, Exeter, Worcester, Lincoln, Ely, Salisbury, Coventry and Litchfield, Chichester, and the Bishop elect of Bath and Wells, in the province of Canterbury. Moreover, writs were directed to only twenty-three temporal peers, and not less than 130 spiritual ones; and the citizens of York and Lincoln were distinctly summoned to send representatives, while the citizens of London, and all the other cities were omitted; and each of the Cinque Ports were to send four of their most discreet men (*a*), other places only two.

3 Prynne,
p. 243.

(*a*) Prynne gives good reasons for doubting that the Cinque Ports were summoned regularly to send representatives to parliament for a long period of time after the 49 Hen. III. The next earliest writ for that purpose, mentioned by him, is one in the 17 Ed. II. directed thus, *Rex dilecto et fideli suo Johanni de Pecche constabular. castri sui Dover, et custodi quinque portuum suorum*, commanded that two barons should be elected out of every port; but the writ 12 Hen. IV. went generally (without mentioning the name) *constab. castri sui Dover, et custodi quinque portuum suorum vel ejus tenenti*, and so were all the writs afterwards. The first return found by Prynne, made by the constable of Dover, or warden of the Cinque Ports, was 42 Ed. III.

Ib. 248.

Ib. 248.

If,

If, however, we are to infer from this document the ancient method of summoning the commons to parliament, it appears that the duty of the high sheriff of each county extended only to the election of knights of the shire, and that separate writs were sent to the returning officers of each city and borough.

Separate
writs to each
borough.

The next most ancient writs now extant are in the 18th year of Ed. I. whereby it was commanded, that *two or three* knights should be chosen for every county, but no mention made of citizens and burgessees.

Brady's An-
swer to Pe-
tit. p. 149.

Then comes a writ of summons, which the industry of Prynnre retrieved from dust and cobwebs, dated the 8th of October, in the 22d year of Edward I. whereby the sheriffs were commanded to cause to be elected two knights for their respective shires, without taking any notice whatever, as Prynnre and Brady state, of the election of citizens or burgessees; and what is remarkable enough, and manifests the imperfect state of the representation of the commons in parliament, another writ, dated the day after the former one, was issued, commanding the sheriffs to cause to be elected two additional knights for each shire, and return them with the two others elected under the former writ (*a*).

2 Prynnre,
p. 31.

Ibid.

The

(*a*) Other instances of irregularity might be given. Even in the 26 Ed. III. a writ was sent to the sheriffs to return a

I

single

Brady's An-
swer to Petit.
p. 158.

Separate
writs disused.

The practice of sending separate writs to each county, city, and borough, seems not to have prevailed for any length of time; in general, probably only one writ was sent to the sheriff of each county, by virtue of which he took the votes personally in his county court for the election of knights of the shire, and also sometimes for the cities and boroughs within his bailiwick; but sometimes he sent the writ to each returning officer, or his precept founded thereon, commanding him to proceed to the election. He then collected the returns, and either tacked them (with his own return of the knights) to the writ, or framed one general return for all together.

3 Prynne
p. 261.

Precepts introduced.

Prynne has preserved the form of a writ for the electing of knights, *citizens, and burgessees*, issued in the 23d year of Edward the 1st, which, with some additions made from time to time, but varied little in other respects, continued in use down to the 7th year of Henry the VIth. In

Brady's Answer to Petit.
p. 159.

single knight for every county; and to six towns, and four cities, to return each *one* representative; and in 27 Ed. III. *one* knight was elected for each county, and two citizens or burgessees for seventeen towns and eight cities, to which writs were sent; and yet, only five years after, viz. 31 Ed. III. writs for the return of two knights for each shire, and two citizens and burgessees for every city and borough, were sent in the usual form.

Ib. p. 160.

it

it we find this clause. *Tibi præcipimus firmiter injungentes quod de com. prædicto duos milites, & de qualibet civitate ejusdem com. duos cives, & de quolibet burgo duos burghenses de discretioribus, et ad laborand. potentioribus, sine dilatione eligi, & eos at nos ad prædictos diem & locum venire fac. ita quod dicti milites plenam & sufficientem potestatem pro se & communitate com. prædicti, & dicti cives & burghenses pro se, et communitate civitatum, & burgorum prædictorum divisim ab ipsis, tunc ibidem habeant ad faciend, &c.*

Precepts introduced.

2 Prynne, p. 33.

The returns of the 26th of E. I. are the oldest now extant; (a) in them the bailiff of the vill of Derby, and the bailiffs of the liberty of the vill of Nottingham, returned each to the sheriff two burghesses for those vills, and the bailiff of Yarmouth made no return. These bailiffs had the return of writs within their districts, and the writs were sent to them, as appears from the return; but as to the remainder of the cities and boroughs, the form of proceeding is not preserved, except that the representatives of the boroughs, in the counties of Dorset and Somerset, were elected along with the knights of the shire *in pleno comitatu*. Nor will this appear surprising, when it is recollected, that every vill was in fact

2 Prynne, p. 39.

Burghesses chosen at the county court, ib. p. 48, 49.

(a) From them it appears, that the city of London returned only two members, and that a separate writ was directed to its sheriffs.

Precepts introduced.

Ll. Hen. 1.

c. 7.

Brady's Glossary, p. 57, 58.

represented in the county court; for by a law of Henry the 1st, it was made the duty of the barons of the king, and of others, to attend the county court, but the *dapifer* of the baron was a lawful substitute; if both the baron and his *dapifer* were absent, the *præpositus et sacerdos, et quatuor de melioribus villæ assint pro omnibus, qui non erant nominatim ad placitum somoniti*. Thus, after the general attendance of the inhabitants of each vill at the county court was dispensed with, our ancestors were careful that they should be represented, either by the lord of the soil, or his deputy, or by his steward, (a) and some of the inhabitants. The *præpositus*, and the *quatuor de villa* were regularly summoned to attend the justices in eyre in the forests; and it was one of the articles against Roger Mortimer, that he had deceitfully made the knights of counties to parliament charge every vill, which answered in the eyre by "quatre & le provost," with the maintenance of a man at arms for one year in

(a) The word "*dapifer*" (in Saxon, *disithegne*) was probably derived from *daps, dapis*, which signifies a feast, so that the duty of this officer might be to look after the lord's household. *Dapifer* might therefore signify a house steward; *præpositus*, a land steward, who received the rents, and looked after the house and farm. Brady mentions one of this kind for Wynbrodesham, temp. Ed. III. See Ll. Edw. Conf. 21. Wilk. p. 202. See Wilkins's Gloss, in verbo *Dapifer*, and Brady's Tracts, Glossary, p. 59.

the

the war in Gascony. In the liberty or hundred of Clackclose, in Norfolk, Brady tells us, that at every turn, the reeve, and four of the inhabitants of every town, were expected to attend, and fined one shilling each for every default; the manor house constantly finding one, whom they called the *reeve*.

Precepts introduced.

Ib. 58.

The following form of a precept, in the 1st Ed. III. has been handed down to us, *R. Walkefare, vicecomes Suff. ballivis libertatis villæ Gipeurii salutem. Mandatum domini regis in hæc verba recepi: Edwardus dei gratia, &c.* (and after reciting the writ) *Et ideo vobis mando quod mandatum istud diligenter exequimini.*

3 Prynne, p. 270.
Form of the precept.

In the 43d year of Ed. III. it appears by the returns preserved by Prynne, that the elections of burgessees were made by virtue of precepts sent by the sheriff to the persons to whom the return of writs belonged. Thus, in the return for the county of Wilts, are these words, *Pro burgenfibus burgorum de la Vize, Marleborghe, & Malmesbury, ego dictus vic. vobis significo, quod mandavi Willo. Baggeswych ballivo libertatis Phe. reginæ Angliæ cui executio hujus brevis pro dictis burgenfibus venire fac. pertinet faciend. qui quidem ballivus Michi nullum inde dedit responsum. Et pro burgenfibus burgi de Bedewpride, &c. a similar return.*

Form of the
precept.

In this manner, the elections of citizens and burgesſes were conducted, until the 7th Hen. IV. c. 15. was paſſed. That act related only to the electing of knights of the ſhires, and required no other alteration in the writ, than the inſertion of this claufe concerning the return. *Et electionem tuam in pleno comitatu tuo factam, diſtincte & aperte ſub ſigillo tuo, & ſigillis eorum qui electioni illi interſuerint, nobis in cancellaria noſtra ad diem & locum in brevi contentos certiſces indilate.* But its other provisions were, poſſibly with a deſign to increaſe the king's prerogative, inſerted in the writs of ſummons, in ſuch a manner as to make them applicable equally to the election of citizens and burgesſes, as knights of the ſhire, at the county courts, and, thus introduced, have been abſurdly continued in the writ ever ſince, though it is required by modern ſtatutes that the elections of citizens and burgesſes ſhall be made in their reſpective boroughs, by virtue of the ſheriff's precepts.

1 Whitel.
p. 1.

The writ was made to run thus, *Tibi præcipimus firmiter injungentes, quod fact. proclamat. in proxim. comitat. tuo, poſt receptionem hujus brevis noſtri tenend. die et loco prædict. duos milites gladiis cinctos magis idoneos et diſcretos comitat. prædict. et de qualibet civitat com. illius duos cives, et de quolibet burgo duos burgenses, de diſcretioribus et magis ſufficientibus, libere et indifferenter per illos, qui*

proclamat.

proclamat. hujusmodi interfueri, juxta formam statutor. inde edit. et provis. eligi; et nomina eorund. milit. civium, et burgens. sic electorum, in quibusdam indentur. inter te et illos qui hujusmodi electioni interfuerint, inde conficiend. sive hujusmodi electi presentes fuerint vel absentes, inseri; eosq. ad dictum diem et locum venire fac. et electionem illam in pleno comitatu factam distincte et aperte, sub sigillo tuo, et sigillis eorum qui electioni illi interfuerint, nobis in cancellar. nostram ad dictum diem et locum certifies; indilate remittens nobis alteram partem indentur. predictarum presentib. consut. una cum hoc breve.

Form of the
precept.

It is not surprising, that in consequence of this alteration in the words of the writ, the practice of electing the citizens and burgeses, along with the knights of the shire, at the county court, which had happened, in some few instances, before the 7th Hen. IV. should become more common, and the return be frequently made in one and the same indenture with the return of the county. Prynne mentions this as a common practice in some places, and gives instances in the counties of Cambridge and Huntingdon, in the 8th and 12th Hen. IV. and 1st and 2d, and other years of Hen. V. and so down to the 23d Hen. VI.; of Kent, in the 12th Hen. IV. and 2d Hen. V.;

3 Prynne,
p. 175, 252.

Form of the
precept.

of Wilts, in the 1st and 2d years of Hen. V.; of Cumberland, in the 2d of Hen. V.; and of Surry, Suffex, Dorset, and Somerset, in the same year. In the two last counties, the borough representatives were elected by four burgeses sent from each borough, and that practice was continued for some time afterwards,

A precept
made neces-
sary.

The inconveniences arising from the misconduct of sheriffs, and, in a great degree, from their taking upon themselves to proceed to the election of citizens and burgeses at the same time with the knights of shires, gave rise to the statute of the 23d Hen. VI. c. 14. (a) in the preamble to which it is complained, that sheriffs have sometimes made “ no return of the knights, “ citizens, and burgeses, lawfully chosen to “ come to the parliaments, but such knights, “ citizens, or burgeses, have been returned “ which were never duly chosen, and other ci- “ tizens and burgeses than those, which by the “ mayors and bailiffs were to the said sheriffs “ returned, and sometimes the sheriffs have not “ returned the writs which they had to make “ election of knights to come to the parliaments,

(a) This statute is in old law French, but in the statute book is translated into English, as in the text,

“ but

“ bu
“ ov
“ ba
“ m
“ tic
“ pa
“ ta
“ ta
“ pr
“ pr
and
“ sh
“ hi
“ fr
“ ev
“ li
“ ro
“ co
“ bo
“ ci
“ it
“ to
T
ing
Edu
vis
mini
&c.

“ but the said writs have imbesiled, and more-
 “ over made no precept to the mayor and
 “ bailiff, or to the bailiffs or bailiff, where no
 “ mayor is, of cities and boroughs, for the elec-
 “ tion of citizens and burgeses to come to the
 “ parliament, by the colour of these words con-
 “ tained in the same writs; *Quod in pleno comi-*
 “ *tatu tuo eligi facias pro comitatu tuo duos milites, et*
 “ *pro qualibet civitate in comitatu tuo duos cives, &*
 “ *pro quolibet burgo in comitatu tuo duos burghenses;*”
 and it was by the same act enacted, “ that every
 “ sheriff, after the delivery of any such writ to
 “ him made, shall make and deliver, without
 “ fraud, a sufficient precept under his seal to
 “ every mayor and bailiff, or to bailiffs or bai-
 “ liff, where no mayor is, of the cities and bo-
 “ roughs within his county, reciting the said writ,
 “ commanding them by the said precept, if it
 “ be a city, to choose, by citizens of the same city,
 “ citizens; and in the same manner and form if
 “ it be a borough, by the burgeses of the same,
 “ to come to parliament.”

A precept
made neces-
sary.

The form of the precept used soon after the pass-
 ing of this act; viz. in the 25th Hen. VI. was this,
Edwardus Langford, vic. Berks. majori & balli-
vis ville de Nova Windesore salutem. Mandatum do-
mini regis in hæc verba recepi: Henricus dei Gratia,
 &c. (and after reciting the writ, it concludes)

3 Prynn,
p. 291.

Quare

A precept
made neces-
sary.

Quare ex parte domini regis vobis conjunctim & divisim, virtute brevis mibi direct. mando quod mandatum prædictum in omnibus præmissis, secundum formam statuti & concessionis infra burgh. prædict. per vos & prædecessores vestros usitat. ex unanimi & de toto facto vestro in hac parte, mibi cum omni possibili festinatione in villa de Abingdon, indilate cum hoc mandato certific. sigilla officii mei seq.

Elections
irregular.

Even the statute of the 23d of Hen. VI. c. 14. did not immediately remedy the evils which had been so severely felt from the partiality of sheriffs, in the elections of citizens and burgesses, and it continued for some time afterwards to be the practice, in several counties, to elect the members for cities and boroughs at the county court, along with the knights of the shire, sometimes all the persons there assembled voting for the citizens and burgesses as well as the knights of the shire, and at other times, four burgesses from the respective boroughs attending, and voting separately for the two burgesses to represent their borough in parliament.

3 Prynne,
p. 252, 253,
&c.

Precepts in
general use.

But as the commons grew into importance in the legislature, these irregular practices were dropped, and the 23d Hen. VI. at length complied with; so that about the time of the reformation, the elections of representatives for cities

ties and towns were universally made by virtue of the sheriff's precepts, and so have been made ever since.

Precepts in
general use.

The modern form of the precept is this.

Modern form
of precept.

Middlesex. Sir C. A. knight, and Sir R. G.
" knight, sheriff of the said county, to the bailiff
" of the liberty of the dean and chapter of the
" collegiate church of Saint Peter, at W. in the
" said county, greeting. Know that I have re-
" ceived a certain writ of our Lord the King, to
" me directed, the tenor whereof followeth,"
(here follows the writ *verbatim*) " and because
" the execution of the said writ belongs to you,
" therefore, by virtue of the said writ, I require
" you, that you forthwith cause a citizen to be
" elected for the said city, in the place of the
" said P. W. according to the command of the
" said writ: And how this my warrant shall be
" executed you shall make known to me imme-
" diately after the said election made, so that I
" may certify the same, together with the said
" writ, and this precept return to our lord the
" king in his chancery forthwith. Hereof fail
" not.—This is your warrant.—Given under the
" seal of my office, dated the day of
" one thousand seven hundred
" and

" R. S. }
 and }
" S. L. } Sheriff.

From

Precept must
be directed.

From the following case, it appears that the commons, towards the latter end of the reign of Elizabeth, felt the necessity of assuming to themselves the power of examining into the conduct of sheriffs with respect to their precepts. Before that time, these officers seem to have returned what they pleased, without enquiry or reprehension, and the negligence of the returning officers for boroughs escaped with the same impunity. Many returns, made before that time, are now existing, in which the sheriff states, that to the writ, or his precept, the bailiff, or other officer, has made *no return*; and yet there is no trace of any punishment inflicted, or even enquiry made.

D. Ewes,
p. 556.

Ludlow, November 12th, 1597. " Report
" from committee shewed the differences for
" the returns of this borough, before the com-
" mittee, which grew from the sheriff's direct-
" ing his precept to the bailiff of the borough,
" in the singular number, whereas it should have
" been to the bailiffs thereof, in the plural;
" and thereupon the House was divided about
" the sheriff, who might, for want of experience,
" run into that error, ought to be punished, or
" the town, which had, as might well be con-
" cluded, wilfully made use of that his error.
" Some thought the town ought to be amerced, and
" others, that the sheriff ought to be amerced; and
" it was, upon the question, referred to the former
" committee,

“ committee, and if it cannot be decided by
“ them, then they are to learn the opinion of
“ some of the judges.”

Precept must
be directed.

The 7 & 8 W. III. c. 25. f. 1. as well as the
23d of Henry the VIth, requires that the pre-
cept should be *delivered* to the proper officer, but
neither of them require expressly that it should
be *directed* to him, though, in fact, it constantly is,
as appears from the cases of Bletchingly, Mil-
borne Port, Peterborough, and Ludlow, before
cited, and that of *Dickson v. Fisher*, which was
an action of debt for bribery at an election at
Colchester, on the 2 Geo. II. c. 24. The precept
was produced separate from the writ and inden-
ture of return, but had been originally annexed
thereto, and so returned to the sheriff. Upon
the face of the precept the words “ and com-
“ monalty,” appeared to have been obliterated,
by striking a pen through them, but they still
remained legible. The declaration stated, that a
precept had issued, directed to “ the mayor of
“ Colchester,” and this precept, directed to
“ the mayor and commonalty,” was produced
to prove the allegation. The defendant offered
to produce the mayor to prove, that when he
received the precept, and when he returned it to
the sheriff, the words, “ and commonalty,”
were not obliterated, but his testimony was re-
jected. It was argued for the defendant on a
special

4 Burr.
p. 2267.

Precept must
be directed.

p. 47. ante.

special case reserved, that the words "and com-
"monalty," still made part of the precept, and
the plaintiff ought to have shewn the obliteration
was made prior to the delivery to the mayor, and
that the testimony of the mayor ought to have
been received. That these words still remain-
ing legible, were a fatal variance from the de-
claration. Lord Mansfield said, "These pre-
"cepts ought to be directed to the returning of-
"ficer. The plaintiff searches the office, and
"finds it with this alteration or correction.
"These words were put in by mistake; they are
"therefore struck out; they would be sur-
"plusage if they stood there; it is the same as
"if they had never been in. The precept
"ought to be directed to the returning officer,
"and the practice is so. Therefore as the
"plaintiff has produced the precept, no parol
"evidence ought to be received to make it er-
"roneous," and the rest of the court concurred.
From this case we learn, not only that the pre-
cept ought to be directed, but that if directed
to other persons by mistake, besides the re-
turning officer, such addition will be only sur-
plusage (as was decided long before in the case
of Bletchingly) and will not affect the validity of
the instrument. It teaches us further, that such
mistake may be rectified by striking out the su-
perfluous words, even after it has been returned

to

to the sheriff; and that after it has been deposited in the crown-office, no parol evidence can be received to impeach it for this mistake.

Precept must
be directed.

By the 23 Hen. VI. c. 14. every sheriff was required, after the writ was delivered to him, to make *and deliver* his precept "to every mayor and bailiff, or to bailiffs or bailiff, where no mayor is, of the cities and boroughs within his county," commanding them to proceed to election.

Sheriff must
make out
and deliver
precept.

Weobly, July 16, 1660. The committee reported, that upon examination of the fact, "it appeared, *that the sheriff did not send any precept for the election*, nor give any notice of the time; and that the poll being demanded, he did refuse the same; and that for these reasons the committee was of opinion the election was void," and the House agreed.

8 Journ.
p. 90.

Weobly, Feb. 23, 1677. The committee reported, that Sir Thomas Williams was duly elected; but a debate arising in the House, whether the sheriff had duly issued forth his precept, pursuant to the writ for making the said election, it was moved, that the matter of the said election should be re-committed, which was negatived; and then the House negatived a motion to agree with the committee in their resolution, that Sir
Thomas

9 Journ.
p. 444.

Sheriff must
make out
and deliver
precept.

Thomas Williams was duly elected, and resolved the election to be a void election.

The conduct of the sheriff in making out the precept is now regulated by the provisions of the 7 & 8 W. III. c. 25. s. 1. which, so far as relate to the present subject, are in the following words:
 “ When any new parliament shall at any time
 “ hereafter be summoned or called, the proper
 “ officer, to whom the execution thereof doth
 “ belong or appertain, *shall forthwith, upon receipt of the writ, make out the precept or precepts*
 “ to each borough, town corporate, port, or
 “ place, within his jurisdiction, where any member or members are to be elected to serve in
 “ such new parliament, or to supply any vacancy
 “ in the present, or any future parliament; *and*
 “ *within three days after the receipt of the writ of*
 “ *election shall, by himself or proper agent, deliver*
 “ *or cause to be delivered such precept or precepts*
 “ *to the proper officer of every such borough, town*
 “ corporate, port, or place, within his jurisdiction,
 “ *to whom the execution of such precept doth belong*
 “ *or appertain, and to no other person whatsoever.*”

And by the second section it was further enacted, “ That neither the sheriff, nor his under
 “ sheriff, in any county or city, nor the mayor,
 “ bailiff, constable, portreeve, or other officer or
 “ officers of any borough, town corporate, port,
 “ or

“ or place, to whom the execution of any writ or
“ precept for electing members to serve in par-
“ liament doth belong or appertain, shall give,
“ pay, receive, or take any fee, reward, or gra-
“ tuity whatsoever, for the making out, receipt,
“ delivery, return, or execution of any such writ
“ or precept.”

Sheriff must
make out
and deliver
precept.

By sect. 6. “ Every sheriff, under sheriff,
“ mayor, bailiff, and other officer, to whom the
“ execution of any writ or precept for electing
“ members to serve in parliament doth belong,
“ for every wilful offence against this act, shall
“ forfeit to every party so aggrieved the sum of
“ 500*l.* to be recovered by him or them, his or
“ their executors or administrators, with full costs
“ of suit,” by action of debt, &c. in any of his
majesty’s courts at Westminster.

Here it must be observed, that this statute is
not confined to sheriffs of counties, but extends
to all officers to whom writs of election were
usually sent, and whose duty it was not to
proceed to the elections themselves, but make
out their precepts to others; thus it includes the
sheriff of Southampton, a borough which is a
county of itself, because he issues his precept to
the mayor and two bailiffs, who are the return-
ing officers, and the proper officer of the Cinque
Ports, under whose precepts also all elections are
made. With respect to the Cinque Ports, the

22 Journ.
P. 445. 449.

Sheriff must
make out
and deliver
precept.

three days above limited for delivery of the precept having been found too short, it was enacted by the 10 and 11 W. 3. c. 7. s. 2. that *the proper officer of the Cinque Ports should be allowed six days for the delivery of the precept*, according to the purport of the above-mentioned act.

Numerous instances occur of petitions against elections and returns, complaining of persons not being the proper returning officers having by indirect means got possession of the precepts, and presided at elections. Many of that sort have been cited already.

See chap. 2.

See p. 78, 68,
and 56.

From the cases of Bewdley, 1 Dec. 1710; Minehead, 8 Jan. 1721; Peterborough, 1 Feb. 1727, it appears, that where the sheriff has delivered his precept to an improper person, the legal returning officer may proceed to an election, and that the return signed by him, and tendered to the sheriff in due time, notwithstanding his adversary was in possession of the precept, will be considered as the legal return, and annexed as such to the writ and precept. The following case is to the same effect.

30 Journ.
p. 456.

Wells, 15 Jan. 1766. Robert Tudway complained by petition, that he was mayor of this city, and as such the proper officer to whom the precept ought to be delivered, and to whom the execution of it belonged; but that at the late election

election of a member, the high sheriff of the county of Somerset, instead of delivering his precept to the petitioner, as he was required by the petitioner to do, delivered it to one William Keate, one of the masters of the said city, of whom the petitioner repeatedly demanded it, but was refused; that the petitioner thought it his duty to proceed to an election, and afterwards tendered to the sheriff a return, signed by him and many electors, under the common seal of the city, but the sheriff refused to accept it, and accepted of Keates's return, and prayed that Keates's return might be taken off the file, and his annexed. On the 20th Jan. the sitting member admitted Tudway, the mayor, was the proper returning officer, and it was ordered, *nem. con.* that Keates's return should be taken off the file, "the same "not being signed by the proper returning officer of the said city;" and Tudway's return being produced, and the House satisfied that it had been tendered to the sheriff, it was ordered to be annexed, and liberty given to petition touching the election within fourteen days. It appears from the Journals, that petitions complaining of the election were presented; the merits were in part heard on the 19th of February. Evidence was produced to prove the mayor's refusing to go *into the borough* to receive the precept, and to shew the manner of Keate's (who

Sheriff must
make out
and deliver
precept.

30 Journ.
p. 466.

Ib. p. 595.

Sheriff must
make out
and deliver
precept.

Ib. p. 601.

was the senior master of the said city) proclaiming the election, and taking the poll. The poll taken by Keate, being offered in evidence, was objected to, and after the point was argued on both sides, it was moved, "that the poll taken at the last election of a citizen to serve in Parliament for the city of Wells, by Mr. William Keate, be brought up;" and that motion being amended, by adding after the word "Keate," these words, "who was not the proper returning officer at the said election," the main question was put, so amended, and passed in the negative, 166 to 24. On the 24th the petitions were withdrawn with leave of the House.

CHAP. V.

OF THE DUTY OF THE RETURNING OFFICER
FOR CITIES AND BOROUGHs BEING COUN-
TIES OF THEMSELVES, AND FOR CITIES AND
BOROUGHs IN GENERAL, AFTER RECEIPT OF
THE WRIT OR PRECEPT, AND BEFORE THE
ELECTION OF CITIZENS AND BURGESSSES.

MOST of the cities and boroughs, which are
counties of themselves, proceed to the
election of citizens and burgesses by virtue of
the king's writs, directed immediately to their
returning officer, without the intervention of the
high sheriff of the county, in which they are
locally situated, or receiving any precept from
him. Such cities and boroughs were placed by
the common law on the same footing as coun-
ties, and where they held county courts regularly,
their elections were subject to the same regula-
tions. This appears from the case of Kingston
upon Hull, 2d March, 1695, cited in the former
volume, and may be inferred from the following
proceedings.

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K 3

Litchfield,

p. 8.

The Duty of the Returning Officer

Litchfield, 19th Oct. 1722.

" A petition of Thomas Clark, Esq. was read,
 " setting forth, That for the election of citizens
 " to serve in parliament for the city and county
 " of the city of Litchfield, the petitioner, Walter
 " Chetwynd, and Richard Plummer, esquires,
 " stood candidates; that the citizens which
 " have been returned have always been chosen
 " at the sheriff's county court, which court hath
 " been constantly kept once every month, at the
 " distance of twenty-eight days from each coun-
 " ty-court day; that Mr. Richard Hinckley,
 " the sheriff, was prevailed upon by the importu-
 " nities of the said Mr. Chetwynd and Mr.
 " Plummer, and their agents, to proclaim the
 " election fourteen days sooner than he ought to
 " do; that not only the petitioner, but several
 " of the electors, and also the under-sheriff, in-
 " formed the said sheriff of his irregular pro-
 " ceedings, and produced to him the county-
 " court book, wherein the county courts ap-
 " peared to have been regularly kept every
 " month, and requested him to proceed in the
 " usual method; but the said sheriff, through the
 " influences and indirect means used by the said
 " Mr. Chetwynd and Mr. Plummer, was pre-
 " vailed on to proceed in an arbitrary manner;
 " that the said sheriff being determined to pro-
 " ceed on a day on which the said county court
 " ought

“ ought not to have been held, that the petitioner,
“ and many of the principal electors went into
“ the said sheriff’s pretended court, and there
“ protested in writing against his proceeding to
“ an election on that day, and though he was ap-
“ plied to to proceed on the regular and legal
“ day, yet he refused so to do, declaring, that he
“ had then returned his writ, and would not take
“ any other poll, by which means most of the
“ electors were deprived of giving their votes,
“ and the petitioner of being elected, and praying
“ relief in the premises.”

Cities and
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ties,

A motion, That the matter of the said peti-
tion be heard at the bar of the House, passed in
the negative, and it was referred to the committee
of privileges and elections. A petition of several
electors to the same effect was also referred to
the same committee, but no further proceedings
are found in the Journals.

When the writ is delivered to the returning
officer for a city or borough, being a county of
itself, the statute of 7 & 8 W. III. c. 25. s. 1.
requires that he, “ upon the receipt of the same
“ writ, shall, upon the back thereof, indorse the
“ day he received the same.”

Returning
officer for ci-
ties, &c. being
counties,
must indorse
receipt.

And by the statute of the 19 Geo. II, c. 28.
s. 7. it was enacted, “ That the sheriff or sheriffs
“ of every city or town, being a county of itself,

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“ and having a right to elect a member or mem-
“ bers of parliament, by virtue of the writ is-
“ suing out of chancery, without any precept
“ thereupon, within that part of Great Britain
“ called England, shall forthwith, upon the re-
“ ceipt of the writ for election of a member or
“ members to serve in parliament for such city
“ or town, cause public notice to be given of the
“ time and place of election, and shall proceed to
“ election thereupon, within the space of eight
“ days next after that of his receipt of the said
“ writ, and give three days notice thereof at least,
“ exclusive of the day of the receipt of the writ,
“ and of the day of election.

And by section 8. it was provided, “ That in
“ case any sheriff or under sheriff presiding at
“ any election of a member or members to serve
“ in parliament for any such city or town, being
“ a county of itself,” shall wilfully offend against
this act, he shall be liable to be prosecuted by
information or indictment in his majesty’s
court of king’s bench at Westminster, or at the
assizes for the city or town where such offence
shall be committed. And by section 10.
Every action, suit, indictment, or information,
given by this act, shall be commenced within
nine calendar months after the fact com-
mitted.

Section

Section 13. provides, " That this act, or any-
" thing therein contained (other than and except
" such clauses and provisions as are by this act
" made for or concerning allowing cheque books,
" or for or concerning notice to be given of the time
" and place of election, and proceeding to election
" thereupon) shall not extend, or be construed to
" extend to any city or town being a county of
" itself, or to any person or persons, where the
" right of voting for any member or members
" of any such city or town is, for or in respect of
" burgage tenure, or where the right of voting for
" such member or members, for or in respect of a
" freehold, does not require the same to be of the
" yearly value of forty shillings."

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The returning officers for cities and boroughs, where the election of members are made by virtue of precepts, is now obliged, by the statute 7 & 8 W. III. c. 25. s. 1. to indorse upon the back of the precept, which is delivered to him, " the day of his receipt thereof, in the presence of " the party from whom he received it."

Returning
officer must
indorse re-
ceipt on the
precept.

When the returning officer was in possession of the precept, there was no specific time limited by the common law, within which he was to proceed to the election, provided only that he made his return to the officer from whom he had received

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4 Inst. p. 49.

it, so as not to impede the return of the writ. Lord Coke, however, tells us, "that there ought
" *secundum legem et consuetudinem parliam.* to be
" given a *convenient time* for the day of the elec-
" tion, and *sufficient warning* given to the citizens
" or burgesses that have voices, that they may be
" present, otherwise the election is not good,
" unless such as have voices do take notice of
" themselves, and be present at the election."
Of this "convenient time," and "sufficient
" warning," the House of Commons were the
judges, and they laid down no general fixed rule,
but each case depended on its particular circum-
stances, the largeness of the district, and the num-
ber of electors.

In one instance the House of Commons di-
rected beforehand how many days notice should
be given of the election. Boffiney, Feb. 15,
1640. The committee had resolved, and the
House agreed, that the election was totally void,
but for what reason does not appear, and a new
writ was ordered, but the House further declared,
"that they think it fit in this case, that there be
" six days notice given to the electors, after such
" time as the precept comes to the officer of the
" town's hands, before they proceed to the elec-
" tion." In general, however, the returning
officer received no instructions as to the notice he
ought to give of the election, after receipt of the
precept, but was left to act at his peril.

The

The following cases, inserted in order of time, (added to that of Bletchingly before cited) will shew how the law stood prior to the statute 7 and 8 W. III.

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p. 47.

Gatton, Feb. 5th and 7th, 1620. Four burgessees had been returned to the sheriff, but he had certified only one of the returns. Sir George Moore reported from the committee of privileges, that a precept had been delivered to the constable, who is the returning-officer, and by him delivered to the minister. The minister published the Wednesday after for the election. On the Tuesday (the day before the day for which notice had been so given) Mr. Copley, lord of the manor, a recusant convict, with six of his lessees, not freeholders, elected Sir Henry Brittain and another person; the freeholders met on the Wednesday, and elected Sir Thomas Gresham and Sir Thomas Bludder. The committee were of opinion this was a void election. It should seem that the sheriff had returned the two members elected by Mr. Copley and his tenants. It was resolved that Sir Henry Brittain should be heard in his place. He stated, that the writ was directed *burgensibus*, and delivered to Mr. Copley; that the town consisted of only seven houses, all but one occupied by Mr. Copley's tenants; that the right of election was not in the freeholders, all of whom, but one, lived out of the town, and only held

1 Journ.

p. 507. 511.

512.

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held of the manor within the town; that the election by Mr. Copley and his lessees was good; and that they made the election at Gatton, though the indenture of return was casually sealed at Ryegate. The debate in the House seems to have gone chiefly on the validity of the notice of election given by the minister, of the election as made at Ryegate, not at Gatton, and of the right of the freeholders (not being resident); and at length it agreed with the committee, that the sitting members were not duly elected, but *in respect of danger from Mr. Copley*, it seems that they resolved not to make it a void election, but ordered the election of Sir Thomas Gresham and Sir Thomas Bludder to stand, and the sheriff was commanded to bring in the indenture of their election. In order to make good the election of Sir Thomas Gresham and Sir Thomas Bludder, the House must have held that the notice of election, published by the minister, was good, and that the right of election was in the non-resident freeholders.

Journ.
p. 537.

Rochester, March, 3, 1620. Sir George Moore reported from the committee of privileges, that the election was good; and afterwards, on the same day, that the mayor had sent but half an hour's notice of the election, and there was a market near, where many of the electors were absent; that the mayor was faulty in all, and that

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that he ought to be admonished (*a*). Sir Dudley Digges was for a bill to reform these abuses, and for sending a letter to the mayor to do so no more. Mr. Alford was for a bill, which was accordingly ordered to be brought in.

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law.

Winchelsea, 3d, 14th, and 18th, March, 1623. "The mayor having received a precept to proceed to the election, caused notice or warning to be given to the jurates and freemen the two and twentieth of January, 1623, at night, omitting two Tildens, who had votes, to meet the next morning at the court-hall, *as about the business of the town generally*, at which time there met the mayor and six jurates, as also both the Tildens, and ten of the eleven freemen." The committee reported several resolutions, to which the House agreed, the third was, "That an election of a burgess to the parliament, without due warning aforegoing, if any of the electors be absent at the time of such election, is void, for without such

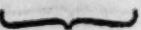
Glanv. p. 12.
1st Journ.
p. 726, 728,
739.

Ib. p. 19.

(*a*) It does not distinctly appear in the Journal, whether this was the statement of facts made by the committee, or by some member in the course of his speech, for it was not uncommon for the chairman of the committee to make reports at the same time, on all the elections which had been referred to it, and for members to make their observations, and discuss them separately afterwards, in the course of the sitting.

" warning

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“warning the electors know not where nor
“when to meet, and they are not bound to at-
“tend continually, in expectation when or
“where it should be.” The fourth was, “That
“the said warning given for a meeting generally,
“without expressing the cause why, was an in-
“sufficient warning, and consequently the elec-
“tion thereupon void; for, unless the electors
“know beforehand what the cause of meeting
“is, they cannot advise or consider sufficiently
“with themselves what to do, nor who, in their
“judgments, should be the fittest persons to be
“chosen, but should go to a precipitate election
“upon a sudden proposition, which may turn
“the commonwealth to prejudice; and whereas,
“by law, he that being duly warned doth yet
“absent himself, loseth his voice for that time,
“divers who, upon a general warning, supposing
“the matter to be but slight and ordinary, will
“peradventure make default, would not so do,
“nor lose their voice, if they were formally in-
“formed, as they ought to be, of the weight and
“consequence of such business as should be
“handled, whereof can be greater than for elec-
“tions to the parliament.” The ninth resolu-
“tion was, “That the said Paul Wymond, mayor
“of Winchelsea, for giving order for such a
“cautelous warning to be made about the elec-
“tion, threatening and terrifying of the Tildens
“and

Glanv. p. 23.

“ and Martin, three of the electors, unlawfully
“ excluding the Tildens from their voices, seek-
“ ing to draw the said Sir Alexander into scan-
“ dal touching his religion, without cause
“ had committed an offence against the liberties
“ and privileges of the commons in parliament,
“ and to the preventing and hindering a due
“ election, for which, after report thereof made
“ from the committee, he was brought to the
“ bar of the House, kneeling as a delinquent
“ at his first entrance, but then directed by Mr.
“ Speaker to stand up, which he did, whereupon
“ Mr. Speaker, as the manner is, rehearsed to
“ him the particulars of the offence wherewith
“ he was charged, hearing his defence thereunto,
“ what he could say for himself, and debating
“ it with him as much as was convenient; which
“ being done, he was again withdrawn, while the
“ House advised and resolved what to do with
“ him; and receiving no satisfaction by his de-
“ fence, they did order and adjudge, that for
“ such his misdemeanor he should be committed
“ to prison under the custody of the serjeant at
“ arms attending upon Mr. Speaker, for certain
“ days; and then upon his humble submission and
“ acknowledgment of his fault at the bar of
“ the House, upon his knees, to be enlarged
“ from hence; and to make acknowledgment
“ of his fault at Winchelsea, in the presence of
“ the

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1 Journ.
p. 740.

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1 Journ.
p. 774.

Glanville,
p. 25.
1 Journ.
p. 745.

" the jurates and the freemen there, before the
" writ for a new election should be executed;
" which judgment being agreed upon in the
" House, the delinquent was again brought in,
" and set at the bar on his knees, and Mr.
" Speaker, in the name of the House, pronounced
" judgment upon him, for and in the name of
" the whole House, which judgment was exe-
" cuted upon him accordingly."

Stafford, March, 22, 1623. Matthew Cradock, esquire, was elected in the first place, and Sir William Walter petitioned against the election of Richard Dyott, esquire, who had been returned as elected in the second place, but admitted the election of Cradock to be good. It appeared that the mayor, and some of the inhabitants, being assembled to consult of a business touching their town-mills, one Mr. Dorrington unexpectedly produced the sheriff's precept for an election of burgeses for this borough, whereupon other electors coming in, but others being absent, it was moved by those present to go to an election, and yielded unto. The precept being read, Cradock was elected without opposition, but there was a contest between Walter and Dyott. Under these circumstances Mr. Glanville reported from the committee of privileges, that the election of *both* burgeses was void for want of due warning, for though Cradock's election

election was not disputed, yet as the election of Dyott was void from a cause that equally affected both, their cases could not be severed, and the House must take notice of it, and give judgment accordingly. The House agreed, and a new writ was ordered.

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Dover, 24 March, 1623. This port or borough sends barons or burgesses to the parliament by prescription, and is incorporated by the name of mayor, jurates, and commonalty, which commonalty were antiently all the free-barons, or freemen, inhabitants of the said port or town, not being jurates or chief burgesses there; but by a byelaw made in the reign of queen Elizabeth, it was agreed, that there should be thirty-seven of the discreetest commons, to be chosen by the mayor and jurates, who should have power, for all in the name of the whole commons, to choose all officers in this town, as burgesses to the parliament, and all other officers belonging to this town, which have been accustomed to be elected and chosen by the commons, and the thirty-seven persons so elected had been ever since called the common council, and they alone, ever since, had chosen members and other officers for the said port. The mayor of Dover having received a precept to proceed to election, caused notice or warning thereof to be given to the jurates, and to the said thirty-seven, called now the common-

Glanv. p 63.
1 Journ.
p. 748.

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council,

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council, for a general meeting to be had about business of the town, not expressing the particular cause. At which time and place, the mayor, jurates, and thirty-seven appeared, and divers other free barons, or freemen, inhabitants of the said port or town, though not summoned, upon conjecture wherefore the meeting was, came and claimed to have their voices in the election, and offered to join in the business, but they were excluded, and then the mayor, jurates, and thirty-seven chose Sir Edward Cecil and Sir Richard Younge.

The committee, after resolutions against the right of the thirty-seven to vote, resolved,
“ 3dly, That the said warning for the election
“ was utterly insufficient, as well for the generality thereof, as also for that the free barons, or
“ freemen, inhabitants of Dover, who ought to
“ have voices in the election, besides the mayor,
“ jurates, and thirty-seven, called now the common-council, were not warned, for which see the
“ reasons delivered in the case of Winchelsey.”

“ 4thly, It was conceived by the said committee, and so reported to the House, and there
“ resolved, that the said Sir Edward Cecil and
“ Sir Richard Younge were unjustly returned,
“ without any lawful election to warrant the
“ same; for that divers of the lawful electors
“ never were warned to attend the election, and
“ some

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“ some others of them, which offered themselves,
“ were wrongfully excluded from the election, in
“ form as aforesaid : Wherefore it was ordered,
“ that a warrant should be made, which ac-
“ cordingly was made by Mr. Speaker, for a
“ writ to go forth for a new choice to be had of
“ barons or burgesses for the same port and
“ town of Dover, which new writ issuing ac-
“ cordingly, both the said Sir Edward Cecil and
“ Sir Richard Younge, whom the House found
“ altogether innocent of any practice touching
“ their former election or return, were lawfully
“ chosen by all the rightful electors, and duly re-
“ turned accordingly.

“ 5thly, It was conceived by the said com-
“ mittee, and so reported to the House, and
“ there agreed and ordered, that no punishment
“ should be inflicted upon the now mayor of
“ Dover, for not warning all the free barons, or
“ freemen, there inhabitants, to attend the said
“ election, albeit of right they ought to have
“ been warned, as persons by law interested in
“ the election, the said ordinance and usage
“ notwithstanding; because by colour of the said
“ ordinance and usage of sixty years or more
“ thereupon following, it might well be pre-
“ sumed by the said mayor, following the course
“ of divers of his predecessors, that of right they
“ ought not to have been warned, and so the

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“ said ordinance and usage by reason thereof,
“ albeit it would not alter the right of elections,
“ when it was judicially brought into question,
“ yet the same was sufficient to excuse the said
“ mayor from punishment, so long as he did
“ nothing of himself corruptly, or by practice,
“ to any private end, but was merely misled by
“ mistaking the law, touching the validity of the
“ said ordinance, and the pursuant usage there-
“ upon had by colour thereof.”

Glanv. p. 76.
1 Journ.
P. 759.

Newcastle-under-Line, April 9, 1624. The
case was, a meeting was had for the election of
burgesses, but it appeared not, neither one way
nor the other, whether any due warning was given
for the said meeting. Mr. Leveson was clearly
chosen for the first place, but as to the second
place it was doubtful between Sir Edward Vere
and Mr. Keeling, and a dispute arising as to who
had a right to vote, the poll was not pursued,
and Mr. Leveson and Sir Edward Vere were
returned. The committee resolved the election
of Mr. Leveson for the first place was good,
“ howbeit, it was objected and insisted upon,
“ that by reason no due warning was made to
“ appear for the said meeting, wherein he was
“ chosen, therefore the said meeting was unlaw-
“ ful, and consequently the said election.

“ But it was answered and resolved, that albeit
“ the precept for warning be in the affirmative,
“ yet

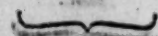
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“ yet lawful warning, in all cases, is generally to
“ be presumed, until proof be made to the con-
“ trary; for otherwise it should be in the power
“ of any one, upon a pretence of want of warn-
“ ing, to trouble any burgesses of the House, and
“ make him bring proof, though from never so
“ remote a part of the kingdom, to prove warn-
“ ing given for his election, which might be in-
“ convenient, and therefore, in a case of this na-
“ ture, we must stand to general and reasonable
“ presumption, until express proof be made to
“ the contrary.

“ But touching the second place, it was con-
“ ceived by the committee, and upon report
“ thereof so resolved in the House, that no elec-
“ tion at all was made of any burgesses whatsoever,
“ for the reasons formerly expressed in the case
“ of Winchelsey, and the return of Sir Edward
“ Vere was without warrant, and unlawful; and
“ therefore it was further ordered, that the said
“ Sir Edward Vere should be discharged out of
“ the House, and a warrant made by Mr.
“ Speaker for a writ to go forth to choose one
“ new burgess in the place of the said Sir Ed-
“ ward Vere.”

Stockbridge, 9 April, 1624. One objection
to the return was, “ that no sufficient warning or
“ notice was given to the electors, of the time
“ and place appointed for the election.” The

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1 Journ.
p. 882.

2. Journ.
p. 10.

petitioners failed in their proof, and the committee held, as in the case touching the borough of Newcastle, that the proof of want of warning, or notice of the time and place of election, ought to be made by him that complaineth of the election, or else it shall be presumed that there was a sufficient notice, until the contrary appear. So they reported the election to be good, and upon report thereof the House agreed.

Bridport, April 12, 1628. Mr. Hakewill reported from the committee, that the question was, whether the commons, or only the bailiffs and thirteen capital burgesses, had right to elect; that the committee was of opinion, "the commoners had voice in the election," but that here was "no good election, because the commons, having right of voice, had no warning as they ought to have had;" and thereupon the House agreeing, a new writ was ordered.

St. Michell, April 24, 1640. This case is very imperfectly stated in the Journal; but there seems to have been two questions, first, Whether the right of election was in the burghers only, or the burghers and inhabitants? second, Whether there had been sufficient time? and upon this it was agreed, that if this had been a great town, and that all the inhabitants had had voices, this might have been taken to be a surprise. The election

election of the sitting members was resolved to be good.

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Great Marlow, Nov. 9, 1640. There was a double return of Mr. Borlace and Mr. Ipsley, and Mr. Borlace and Mr. Hobby. It was resolved by the House, that Borlace was well elected. The merits of the election were gone into, and on the 19th November, Mr. Maynard reported from the committee, that a precept had been delivered to Mr. Moore in due time; that being asked the day before the election, if he had the precept, he denied he had it, but the next day, which was the day of the election of knights of the shire for the county of Bucks, a quarter of an hour before the election, he produced the precept in the presence of twenty or thirty, and proceeded to the election, without any notice to the rest of the town, and Mr. Borlace and Mr. Ipsley were chosen burgeses. The House agreed with the committee, that the election was totally void, and ordered a new writ; and that it was a misdemeanour in Moore.

2 Journ. p. 23.

Ib. p. 31.

Ivelchester, Feb. 15, 1640. Upon the report of Mr. Maynard from the committee for privileges, it was resolved, that the election of Sir Henry Berkeley and Mr. Hunt was void, in regard that due notice was not given to the electors, and a warrant was ordered to issue for a new writ.

2 Journ. p. 85.

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8 Journ.
p. 276.

Chippenham, June 20, 1661. A double return. Sir Edward Hungerford and Mr. Baynton, in one indenture, and Sir Hugh Speake in another. Serjeant Charlton reported from the committee of privileges, that no due notice was given of the election, and so many electors were absent as might have overbalanced the poll had they been all there; and that the poll being demanded by all three, was refused as against Mr. Baynton. The House agreed with the committee, that the election was void, and resolved that the bailiff be sent for in custody to answer his miscarriage at the election, and his insolent carriage before the committee, and that the serjeant at arms, or his deputy, should apprehend and bring him up in custody.

10 Journ.
p. 279.

Hastings, Nov. 4, 1689. Mr. Gott complained of the election of Colonel Beaumont, on account of the want of due notice of the election, and fair usage, and that Colonel Beaumont being governor, or lieutenant-governor, of Dover castle, and to whom the writ was directed, had returned himself, though not regularly chosen, nor capable of being chosen, being the officer who had the execution of the writ, &c. 17th January, on the report it appeared, that by order of the mayor, on Thursday morning, at eight o'clock, the officer gave notice for the election to be next morning at nine. There was evidence

10 Journ.
p. 334.

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to shew, that three or four days notice was usually given of elections, but stronger evidence, that twenty-four hours notice was customary, and it was proved all the electors but one attended. There was some evidence of attempts at undue influence by Colonel Beaumont, but the committee reported he was duly elected, and the House agreed.

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Cricklade, Feb. 22, 1695. Colonel Granville reported on the petition of several electors, complaining that, "on the 19th of October
"last, about two o'clock in the afternoon, John
"Wild, bailiff of this borough, gave notice by
"proclamation, that at nine o'clock the next
"morning he would proceed to the election of
"burgesses to serve in this present parliament
"for this borough; which short notice being
"looked upon as insufficient, and several of the
"electors being absent, and others intending to
"go to neighbouring markets on that day, the
"bailiff was applied to to defer the day of elec-
"tion to a reasonable time, but he positively re-
"fused to do it, and went to an election accord-
"ing to this short notice, and hath returned Ed-
"mund Webb and Charles Fox, esquires, as
"duly elected, though several of the petitioners
"protested against the election, and did not give
"their votes, &c." From the report it appears,

11 Journ.
p. 461. 338.

Notice of
election at
the common
law.

that the bailiff gave notice at two o'clock, that the election would be at nine the next day; that application was made to the bailiff to put it off, which he refused; and thereupon, and upon his denying a list of the voters, Mr. Styles, who had declared himself a candidate, went out of town. It was agreed the right of election was in the freeholders, copyholders, and leaseholders, for more than three years; and thence inferred on behalf of the petitioners, that the above could not be a reasonable time, because deeds were to be produced to make out the right of the voters, which would take up a longer time. It was proved for the sitting members, that many elections had been had on as little notice; and it appeared from the poll, that eight of the petitioners had voted at the election, and one was in the town; and that the election had been fairly conducted, and votes taken for Mr. Styles, as well as the sitting members. The committee resolved, the sitting members were duly elected, and that the petition of the burgesses was frivolous, vexatious, and groundless. It is probable that this case might have occasioned the insertion of the provisions relating to the speedy delivery of precepts to returning officers, and their conduct as to the notice of election, in the statute of 7 and 8 W. III. c. 25. which act was originally brought in to regulate

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gulate county elections (*a*) but was read a second time two days only after the decision of the House in the above-mentioned case of Cricklade.

Notice of
election at
the common
law.

11 Journ.

P. 464.

Notice by
statute.

An end is now put to all complaints of this kind by the 7 and 8 W. III. c. 25. f. 1. which, after providing for the delivery of the precept to the proper returning officer of each borough, town corporate, port, or place, enacts, "that
" every such officer, upon the back of the same
" precept, shall indorse the day of the receipt
" thereof, in the presence of the party from
" whom he received such precept, and shall
" forthwith cause public notice to be given of
" the time and place of election, and shall pro-
" ceed to election thereupon, within the space of
" eight days next after his receipt of the same
" precept, and give four days notice, at least, of
" the day appointed for the election."

In the following case it was one of the allegations of the petition, that public notice of the election was given on a Sunday.

On Sunday.

(*a*) The bill was originally founded on the resolutions in the cases of Hertfordshire and Surry, see my first vol. p. 314. for the very day after, leave was given to bring in a bill "for punishing of such as shall forswear themselves
" before the sheriff, at elections of knights of shires," but this title was changed afterwards.

11 Journ.
p. 394.

Bridport,

Notice by
statute.

3 Luders,
p. 30.
40 Journ.
p. 93.

Bridport, 1784. The election was upon Thursday, April 1, in consequence of a notice proclaimed thereon the preceding Sunday (a). A petition was afterwards presented against this election, founded upon an objection to the day of the notice, as being improperly given on a Sunday, and upon another objection (not true in fact) viz. the minority of one of the sitting members. This petition, not having been heard in the first session of that parliament, was not renewed in the following session. Mr. Luders says, he had particular reason to think that the petitioners earnestly wished to prosecute their petition, and, therefore, concludes, that their dropping it must have been owing to legal advice, that they had no good ground for the prosecution.

At what
hour.

In the case of Shaftesbury, in 1793, the question was, whether the returning officer was justified in giving notice of the time and place of election between the hours of 11 and 12 at night. The committee resolved the election to be valid, but,

(a) Mr. Luders observes, "that the law authorises any ministerial acts of this kind to be done on Sunday; many acts, merely secular, are required by law to be notified on a Sunday, and in the church. Till the statute 29 Charles the Second, ch. 7. it was lawful to make arrests and serve judicial process on a Sunday. In the case of Clerkenwell, Bott, p. 11, it was held, that an appointment of overseers of the poor on a Sunday was legal."

Notice by
statute.

to prevent such unjustifiable practices in future,
the statute of the 33 Geo. III. c. 64, was passed,
to explain and amend the 7th and 8th of Will. III.
“ so far as relates to the publication of notices
“ of the time and place of election ;” which
act of 33 Geo. III. reciting that it is not in the
statute of Will. III. “ specified at what time, or
“ within what hours of the day it shall be in-
“ cumbent on the proper officer to give such
“ public notice as aforesaid. And whereas, by
“ reason of such uncertainty, great incon-
“ veniencies may arise from the undue practices
“ of returning officers and others,” directs, that
in future “ all notices to be given of the time
“ and place of any election for members to serve
“ in parliament, shall be publicly given at the
“ usual place or places, within the hours of
“ eight of the clock in the forenoon and four of
“ the clock in the afternoon, from the 25th day
“ of October to the 25th day of March inclu-
“ five ; and within the hours of eight of the
“ clock in the forenoon and six of the clock in
“ the afternoon, from the 25th day of March to
“ the 25th day of October inclusive, and not
“ otherwise ; and that no notice to be given of
“ the time and place of elections of members
“ to serve in parliament shall be deemed or
“ taken to be a good or valid notice for any
“ purposes, or to any effect whatsoever, which
“ shall

Notice by
statute.

“ shall not be made and published in the manner
“ and within the time of day aforesaid, any law,
“ statute, usage, or custom, to the contrary not-
“ withstanding.”

The four
days how
reckoned.

It has been usual for the returning officers to construe “ the four days notice at the least,” to mean three clear days between the day of giving notice and the day of election; in other words, to reckon one of those days inclusive, the other exclusive, thus to give notice on Monday for an election on Friday; and this construction is supported not only by general usage, but by a decision of the House.

17 Journ.
p. 137.

Chichester, 13th of March, 1711. The petitioners insisted that the election was void for want of due notice. The election was on Tuesday, the 3d of October, 1710, and the notice was given upon the Friday before. The committee resolved that, “ it is the opinion of
“ this committee, that a legal notice was given
“ of the time of the late election of members for this city, and that the sitting members were duly elected, and the House agreed.

Notice too
short.

Where both the days of giving notice and proceeding to election have been reckoned inclusively, the notice has been deemed too short and the election set aside.

13 Journ.
p. 654.

Corfe Castle, 6th of January, 1701. The petition complained, that, contrary to the act of parliament

parliament for regulating elections, the mayor gave notice, on Wednesday, the 19th of November, to proceed to the election on Saturday the 22d, and did accordingly proceed to the election, &c. It was referred to the committee of privileges, but no further entry appears on the Journal concerning it.

Notice by
statute.

Seaford, 1785. The petitions complained, that the returning officer had proceeded to the election, on the 30th of March, 1784, without giving four days notice of the day appointed for such election, as required by stat. 7 and 8 W. III. c. 25. whereby the said election and return were null and void. It was admitted, that the sitting members had a majority on the poll, and that the election was made on the 30th of March, in consequence of notice proclaimed on the 27th of the same month. The merits depended solely on the legal effect of the clause in the above statute, for the committee would not allow the sitting member to shew, by evidence, either that the day had been fixed at the request, and by the consent, of the petitioners, or that every voter had had notice of the time of election, and all but two (who were friends to the sitting members and declined voting) had actually voted, or that the notice of election had been given fraudulently by the returning officer, in collusion with the petitioners. After hearing arguments on both sides,

3 Lud. p. 3.

Notice by
statute.

40 Journ.
p. 653.

Notice too
long.

47 Journ.
p. 481.

Ib. p. 537.

Notice at
what place.

Notice in
Wales.

sides, on the legality and effect of the above-mentioned clause, the committee resolved, "that the last election was void;" and so reported to the House.

The words of the statute are equally imperious, when the returning officer has exceeded the eight days allowed by the statute, as where he has fixed the election within the four days.

Salisbury, 3d March, 1713. The petition alledged, that the petitioner was *unanimously* elected; "that John King, mayor, deferred the election till the tenth day after the receipt of the precept;" and then stated other charges affecting the merits of the election. 4th April, the merits were heard at the bar of the House, but the particulars do not appear on the Journal. The sitting member was resolved to be duly elected.

By the 7 and 8 W. III. no *place* was fixed, at which the notice of the election was to be given, but by the 33d Geo. III. c. 64. it must now be given "at the *usual* place or places."

By the 35 Hen. VIII. c. 11. s. 3. reciting that "forasmuch as the inhabitants of all cities and boroughs, in every the said twelve shires, within Wales, and in the said county of Monmouth, not finding burgessees for the parliament themselves, must bear and pay the burgessees wages within the shire towns of and in
" every

Notice in
Wales.

“ every the said twelve shires in Wales, and in
“ the said county of Monmouth,” it was enacted,
“ that, from the beginning of the said parliament,
“ the burgessees of all and every of the said cities,
“ boroughs, and towns, which be, and shall be
“ contributory to the payment of the burgessees
“ wages of the said shire towns, shall be lawfully
“ admonished, by proclamation or otherwise, by
“ the mayors, bailiffs, or other head officers of
“ the said towns, or by one of them, to come
“ and to give their elections for the electing, at
“ such time and place lawful and reasonable, as
“ shall be assigned for the same intent by the said
“ mayors, bailiffs, and other head officers of the
“ said shire-towns, or by one of them, in which
“ elections the burgessees shall have like voice
“ and authority to elect, name, and choose the
“ burgessees of every the said shire-towns, like
“ and in such manner as the burgessees of the
“ said shire-towns have or use.”

Cardigan Borough, April, 30, 1662. Serjeant
Charlton reported, that the question on this elec-
tion, between Mr. Philips and Sir Francis Lloyd,
did arise on the statute of 35 Hen. VIII. c. 11.
f. 3. as to the notice to be given of the election
for members to serve for shire-towns in Wales,
and that the committee was of opinion, that
notice of all elections of members for shire towns
ought, by the intent of the said act, to be given

8 Journ.
p. 417.

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to

Notice in
Wales.

to the out-corporations and boroughs which do not send burgesſes themſelves; and that no ſuch notice having been given, the election of Mr. Philips was void, and the Houſe agreed, “be-
“ cauſe due notice was not given of the ſaid
“ election,” and “reſolved, that this Houſe doth
“ agree with the committee, that notice of all
“ elections of members to ſerve for ſhire towns
“ in Wales, ought to be given to the out-corporations and boroughs in ſuch ſhire.”

15 Journ.
P. 94.

Montgomery, 17th of January, 1705. The queſtion was, whether due notice had been given of the election? On Monday, the 14th of May, 1704, one of the ſerjeants was ſent by one of the bailiffs (the other not being in town) to Llandidoes, one of the out-boroughs, to give notice to the bailiffs there that the election would be on Friday following, viz. the 20th; the other ſerjeant was ſent, on the ſame day, to give a ſimilar notice to the bailiffs of Welſh Pool and Llanvilling; notice was accordingly given in all theſe places, and an alderman, at nine of the clock in the morning of the ſame Monday, in the abſence of the ſerjeants, made a proclamation at the uſual place at Montgomery, of the time of the election. The committee reſolved, that the fitting member was duly elected, and the Houſe agreed.

The

The following provisions respecting elections at New Shoreham are made by stat. 11 Geo. III. c. 55. s. 5. viz.

Notice for
New Shore-
ham.

“ That the constable, or other proper officer,
“ to whom any writ or precept shall be directed,
“ for making any election for the said borough,
“ shall, upon the reception of such writ or pre-
“ cept, indorse upon the back thereof the day
“ of his receipt thereof, in the presence of the
“ party from whom he received such precept,
“ and shall forthwith cause public notice to be
“ given within the said borough of New Shore-
“ ham, and at the towns of Bramber and Steyn-
“ ing, in the said county of Sussex, by fixing up
“ a notice thereof, in writing, on the market
“ houses; or on the doors of the churches of the
“ said towns, of the day of election, and shall
“ proceed to election thereupon *within the space*
“ *of twelve days, and not less than eight days next*
“ *after his receipt of the same precept.*”

And the following provisions, respecting the borough of Cricklade, are made by stat. 22 Geo. III. c. 31. s. 5. viz.

Notice for
Cricklade.

“ That the proper officer, to whom any writ
“ or precept shall be directed, for making any
“ election for the said borough, shall, upon the
“ receipt of such writ or precept, indorse upon
“ the back thereof the day of his receipt thereof,
“ in the presence of the party from whom he
“ received such precept, and shall forthwith
“ cause public notice to be given within the said

Notice for
Cricklade.

“ borough of Cricklade, and the severall towns
“ of Highworth, Malmesbury, Swindon, and
“ Wotton Bassett, by affixing up a notice thereof,
“ in writing, on the market-houses, or on the
“ doors of the churches of the said towns, of
“ the day of election, and shall proceed to
“ election thereupon *within the space of twelve*
“ *days, and not less than eight days* next after his
“ receipt of the same precept.”

Place of
election.

The statute of the 7 & 8 W. III. requires that the returning officer shall give notice not only of the time but the *place* of election. It may be presumed, that he will not, without some good reason, even form a wish to change the usual course of proceeding, and, therefore, that the election will, in general, be held in the accustomed place; but there is no statute (as there is for county elections) or rule of law by which he is bound to hold it there.

Preparations
for the elec-
tion.

By the common law, the returning officer was not expected to put himself to any expence, in order to accommodate the candidates or voters; it was sufficient that, at the time and place appointed, he was personally present, and ready to take and count the votes of such electors as rendered themselves. He was not required to erect scaffolds or booths, or to appoint poll-clerks for the more convenient taking of the poll. In many places these expences have been paid in equal proportions by the candidates, by virtue of
§ private

private agreements made previous to the day of election between them and the returning officers; and in popular districts, where the poll may be long protracted, as at Westminster, &c. they amount sometimes to enormous sums, but in some corporate cities and boroughs they are usually defrayed out of the public purse.

Preparations
for the elec-
tion.

The statutes made for assisting returning officers in taking the poll, generally, as will be seen hereafter, throw the expence upon the candidates; the following is an exception:

By the 14th section of the 21 Geo. III. c. 54. (an act for regulating elections of citizens to serve in parliament for the city of Coventry) it was enacted, "that the returning officer or officers shall, at all future elections of citizens to serve in parliament for the said city, cause the booth for holding such election to be erected in the widest and most convenient part of the open market-place, called Cross-cheap-
ing, not contiguous to any other building."

At Coventry.

And the 34 Geo. III. c. 73. s. 6. throws the expence, in extraordinary cases only, on the candidates, enacting, that in case the candidates, or any of them, shall, *three days before the election*, give or cause to be given notice in writing to the returning officer or returning officers to provide proper places for administering the oaths of allegiance and supremacy, the declaration of fidelity, the oath of abjuration, and the declaration or
affirma-

Preparations
for the elec-
tion.

affirmation to the effect thereof, to the elector; then such proper places shall be prepared and provided before and against the day of election; *and in case there shall not be a sufficient number of fit and convenient places at the town or place where such election shall be had, to be procured conveniently and at a reasonable expence,* then the returning officer or officers is and are required to cause such booths and temporary erections to be made in convenient places, as shall be necessary; and the expence shall be repaid to them by the candidates *at such election,* in equal proportions.

Partiality of
the returning
officer.
p. 13.

The cases of Norwich, 6th of December, 1705, and Sudbury, 1774, cited in the former volume, prove that a returning officer, shewing partiality to a favourite candidate, will incur the censure of the House of Commons. The following case is to the same effect.

2 Journ.
p. 10.

East Grinstead, 24th April, 1640. One question was, whether the right of voting was in the free burgage holders and inhabitants, or in the former only. The committee was of opinion; "that the right of election original," and that Mr. Goodwin, who had been elected by the burgage holders and inhabitants, was well elected, and the House agreed. But it was complained, that the bailiff "did threaten before the election," and at the election threatened those who would not vote for Mr. White, who had opposed Mr. Goodwin;

Goodwin, and since the election had threatened the witnesses who came to give testimony for Mr. Goodwin, "saying, that if they gave their voices for him, their servants should be preſt, and their carts taken away," and other ſuch words of the like nature. The Houſe ordered the bailiff to be ſent for by the meſſenger, "as a delinquent for miſdemeanours committed by him at, before, and ſince the election."

Partiality of
the returning
officer.

If the ſheriff ſhould happen to die after the returning officer has received the precept, it appears from the following ſhort entry, that it is his duty to proceed to execute it, and that he muſt tranſmit the return to the new ſheriff. Bridgnorth, 20th Feb. 1609. "A writ before the ſeſſion to the ſheriff: the ſheriff dies before the election. Reſolved, the new ſheriff to return when he comes; the bailiff cannot." The caſe of Dorcheſter, 3d of December, 1689, reported in the firſt volume, is to the ſame effect.

Sheriff dying
after precept
delivered.

1 Journ.
P. 397.

p. 12.

In caſe the returning officer ſhould die after notice of the time and place of election has been given, the manner of proceeding has not been ſettled by any deciſions.

Returning
officer dying
after precept
received.

From the caſe of Glouceſter city, 19 Dec. 1702, ſtated in the former volume, it may be inferred that, if the day appointed for the election

p. 15.

was

Returning
officer dying
after precept
received.

13 Journ.
p. 101.

was suffered to elapse without any election being made, a new writ must be issued; and in the following case, where the electors proceeded to an election at the time prefixed, both the returns made by the contending parties among them, were resolved to be unduely made, but it did not follow of course that the election was to be totally set aside. In this difficulty the sheriff was directed to make a return to his writ; he was obliged to act at his own peril, and the House declined to direct his proceedings.

Dartmouth, 9 Jan. 1699. John Davy, esquire, high sheriff of the county of Devon, presented a petition to the House, setting forth, "that he having, pursuant to the writ to him directed, sent his precept to the mayor and burgeses of Clifton Dartmouth, and Hardnesse, "for electing a burgeses to serve in this present "parliament for the said borough, in the room of "Sir Joseph Herne, deceased, and delivered the "same to Mr. Whitrow, the mayor, who pro- "claimed the day for the said election, but died "before the day appointed; and that the "burgesses and freemen notwithstanding pro- "ceeded to the election; and some of them re- "turned Nath. Herne, esquire, by one indenture, "and others returned Rowland Holt, esquire, by "another indenture; and praying the direction
" of

" of the House, whether both, or which of the
" two indentures, he ought to return to the clerk
" of the crown, or whether he can return either
" of them, they not coming to his hands by the
" proper officer, who died after the proclama-
" tion made, before the election.

Returning
officer dying
after precept
received.

" Ordered, That the sheriff be directed, ac-
" cording to his duty, to make a return of his
" writ."

12th Feb. 1699. The precept was delivered to Mr. Whitrow, the mayor, who appointed the 16th of December for the election, and gave notice thereof, but died the day before it was to have come on. The burgeses proceeded to the election at the time appointed, and each of the candidates was returned. Both returns noticed the death of the mayor; that of Mr. Holt was expressed to be by several of the burgeses; that of Mr. Herne was by several of the magistrates and free burgeses, and under the common seal. The sheriff returned both into the crown office. These facts appearing from the opening of the counsel, no witnesses were examined, and the committee resolved, first, that Mr. Herne, then that Mr. Holt, was not duly returned. On a motion for the Speaker to issue his warrant for making out a new writ, the debate was adjourned to that day seven-night, after

13 Journ.
p. 203.

Returning
officer dying
after precept
received.

the consideration of the matter relating to charters and mandamus's, which had been previously fixed to come on then. But there are no further proceedings entered on the Journal, and no writ was ordered during that session.

CHAP. VI.

OF THE ELECTORS FOR CITIES AND BOROUGHES
IN GENERAL.

THE right of voting for representatives of cities and boroughs is not (as of counties) regulated by any one fixed rule, which uniformly pervades the whole kingdom, but inquiry must be made after the acts of parliament, charters, or last determinations affecting each particular place, and the local usage prevailing there. After having shewn that the tenants in ancient demesne, and in burgage, were probably the most ancient classes of voters, it is not unreasonable to conclude, that many, if not all of the present rights of voting, however remote their connexion or analogy may at first appear, were derived originally from *tenure*, as the parent stock. The whole property of the lord of the vill might be portioned out among his vassals, to be held by burgage tenure; but it does not follow, that because he was lord of the vill, he was also proprietor of all the land and houses locally within

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it. On the contrary, we learn from doomsday book, that it was a very common thing for lands within a vill to be attached to other manors or vills, and to be held by tenants who paid their rents, and performed their services to distant lords. We find also that the burgesſes had ſometimes perſons of baſe condition, as villeins, bordars, and cottars, under them, to aſſiſt in the cultivation of their lands. Hence the burgesſes holding of the lord, were not the only inhabitants of a borough, though they might form the moſt numerous body of them. It can not be ſuppoſed, that either the tenants of foreign lords, or the villeins, bordars, or cottars of the burgesſes, were allowed to meddle with the concerns of the borough, and join in the election of members; the former were repreſented through another channel, and the latter were, by their condition, not allowed to be repreſented at all. The repreſentatives of counties were always elected in the county court, where all freeholders were obliged to attend; and it is not unreaſonable to ſuppoſe, that burgage tenants made their elections, when aſſembled in their borough court. Such we know is ſtill the practice in ſome places. The introduction of royal charters of incorporation broke into the regularity of this ſyſtem; for though in many places the *burg-eſſes* only were incorporated, yet in others, where

where the lords, perhaps, were inattentive to their rights, or weak in the defence of them, the crown might incorporate all the *inhabitants*. The first charters of incorporation into gilds or companies, apparently only for the purposes of commerce, might pass without jealousy; but their effects must have been soon severely felt by every feudal lord, who saw one of these formidable rivals rising in the center of his territories, and sapping the foundation of his power. Till then, he had had the undisputed command of his tenants and district. But, the members of most trading gilds having a right to admit as many strangers as they thought fit to a participation of their privileges, new settlers were introduced within the limits of the gild, without forming any connection with the lord or owing him any service; and though the number of the inhabitants within his borough was increased, the number of his burgage tenants might receive no addition. In process of time, the distinction between burgage tenants and other residents might be nearly lost among themselves, and persons with whom they traded at a distance know all indiscriminately, only as inhabitants within the district, or freemen of the gild.

But further, the wages paid by cities and boroughs to their representatives in parliament was so great a burden, that the smaller districts

General
observations.

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But further, the wages paid by cities and boroughs to their representatives in parliament was so great a burden, that the smaller districts

General
observations.

were prevented altogether from enjoying the privilege, and many of those summoned to send members were used to decline obedience. This burden the tenants would naturally be desirous to throw, in part, upon the inhabitants of their district or strangers whom they admitted to their gild. With the last they would have a right to make what terms they pleased, as the price of admission; and the ancient inhabitants would not hesitate to accept of the same privilege, in order to prevent their trade from passing into the hands of these new settlers. The lords could not view this change with indifference, but rejoiced in every increase of the wealth and population of their boroughs, as an accession of power to themselves. The lords and tenants, thus equally interested to extend the right of election, naturally became indifferent about the description of persons to whom it was given, and the returning officer was generally left to his own discretion. The right itself was, for several centuries, of little or no value to those who exercised it; and if the lord was satisfied, there was nobody to take offence. Hence probably originated the right of residents and freemen (a) to

4. Grey's
Deb. p. 3.

(a) Sir Richard Temple, in the debate on a bill to regulate the election of members to serve in parliament, 12th November 1675, said, "Anciently there was no vote in a
"borough

to vote in certain places, and those various modifications of their right which render it so difficult to reduce this part of the law of elections to any regular system. Almost every city and borough has a right of voting in some respect peculiar to itself, and the general rule by which the law of parliament regulates the modern representation of each city and borough (where there is no act of parliament, charter, or last determination, to direct it) is the ancient local *usage*.

General observations.

There are, however, some places to which this rule cannot apply, as in the newly created boroughs. And in many of those which have been restored to the privilege of sending members after a long intermission, it would be impossible to shew what has been the former usage. In these cases, and perhaps in some others, it would be absolutely necessary to inquire on what class of persons the law originally cast the right of voting, as incident to their situation. Upon this, which is known among lawyers by the technical appellation of the *common law right*, there has been a difference of opinion, as may be seen in the following cases :

Of the common law right to vote.

See chapter

“borough but by burgage tenure, borough houses.—We
“come now to freemen and salesman, scotters and lotters;
“but such only had voice as were able to maintain the
“charge of their burgesses.”

Of the
common law
right to vote.

1. Journ.
p. 702.

Cirencester was created a parliamentary borough, by Queen Elizabeth. 21st May 1624.
“ The committee resolved, that *where no custom*
“ *nor charter to the contrary, the election to be made*
“ *by all the householders*; and upon the question
“ the House resolved, that *in a borough, not being*
“ *a corporation, there being here no free burgesses nor*
“ *charter, nor custom for election, the election to be*
“ *made by the householders, and not only by free-*
“ *holders.*”

Glanv. 10
p. 107.

Such is the imperfect entry on the Journal; but in Serjeant Glanville's report, the first resolution of the committee is stated in these terms;
“ That *there being no certain custom nor prescrip-*
“ *tion who should be electors, and who not, we must*
“ *have recourse to common right, which, to this*
“ *purpose, was held to be, that more than the free-*
“ *holders only ought to have voices in the election;*
“ *namely, all men, inhabitants, householders, re-*
“ *sidents within the borough.*”

1. Dougl.
p. 387.

It was observed in argument in the Pontefract case, that “ though there were controverted
“ elections for Cirencester in 1690, and in 1709,
“ the right of election, as determined on the
“ general principle in 1624, was never disputed
“ or denied.”

In the case of Pontefract, (which is a borough by prescription, but intermitted sending members from the 26th year of Edward the First, till it

was

was restored in the 19th of James the First,) 28th May 1624, from the entries in the Journals, which will be cited at length hereafter, the right of voting appears to have been in contest; and Glanville states the following resolutions of the committee: "First, that, *where no constant and certain custom appeareth, who should be the electors in a parliamentary borough, there recourse must be had to the common law or common right.*" Secondly, that the said charter of incorporation does not in words extend, nor can the matter of any charter be of force to abridge or alter the common right, in case of an election to the parliament. Thirdly, that *of common right all the inhabitants, householders and residents within the borough*, ought to have voice in the election, and not the freeholders there only, as was now pretended on the part of Sir Richard Beaumont, who claimed to have the greatest number of voices of men so qualified."

Of the
common law
right to vote.

Glanv.
p. 141.

Boston, 8 May 1628. "Mr. Hackwill reported from the committee for privileges, the case of Boston in Lincolnshire.—Mr. Bellingham the recorder, and Mr. Okeley, chosen. The question, whether a select number or the commonalty were to chuse. Sir A. Irby chosen by majority of voices of the com-

1. Journ.
p. 893.

Of the
common law
right to vote.

monalty and fourteen of the select number. (a)

"Agreed by the committee, That the election of burgesses in all boroughs did of common right belong to the commoners, and that nothing could take it from them but a prescription, and a constant usage beyond all memory.

1. "Upon question, the right of election for burgesses to serve in parliament for Boston resteth in the commonalty, and not in the mayor, aldermen, and common council.

2. "Upon question, Mr. Okeley not duly elected or returned.

3. "That Sir An. Irby duly elected, and ought to have been returned.

4. "That the mayor of Boston shall be sent for, to put out Mr. Okeley's name, and put in Sir A. Irbye's."

2. Journ.
p. 10.

East Grinstead, 24 April, 1640. From the imperfect entry of the report, it seems that there was no dispute about Sir H. Compton's election, but the contest lay between Mr. Goodwin, who had been returned, and Mr. White; the latter contended, that the election belonged to the free

(a) Here it is noted in the printed Journals, that "in the margin is written by the clerk, *Quere the report at large of Mr. Hakewill.*"

burgage-

burgageholders only; the former, that it belonged to the inhabitants as well as the burgageholders. The committee of privileges was of opinion, that the right of election was original, and declared Sir H. Compton and Mr. Goodwin duly elected, and the House agreed.

Of the
common law
right to vote,

In the case of Gatton, 3d November 1641. as stated in the first volume, the House of Commons seem to have taken for granted, that the common law right was in the *burgesses*; which, in this particular instance, must necessarily mean burgage tenants. The question was, *whether the right of voting rested in the burgesses of common right*, or freeholders dwelling out of the borough had a right to vote by a particular prescription. The committee was of opinion, that there was a prescription which was good against a common right; but the House resolved, that there was a sufficient proof of a prescription against the common right.

1. Grey's
Debates,
p. 244.
9. Journ.
p. 147.

In the debate on the report of the committee of privileges on the election for Tamworth, (a) made 26th March, 1670, Serjeant Maynard said, "Common right of election is not in the corporation, but in the commonalty."

(a) Grey states this debate to have arisen on the election for Bridgewater, which had been disposed of in the December preceeding, and in which there was no point to which Serjeant Maynard's observation could apply.

9. Journ.
p. 118.

Marlborough,

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common law
right to vote.

10. Journ.
pa. 70.

Marlborough, 1 April, 1689. The question was, whether the right of election was by the mayor and a select number of burgesses, or by the populace paying scot and lot. For the petitioners it was insisted, that there never was any mayor till the reign of Hen. 4. and therefore he and the select number could not prescribe to have the right, and that *of common right, the inhabitants had a right, unless the contrary was proved*; but the committee finding by the records and witnesses, that the usage had been to elect by the mayor and select number of burgesses, resolved, that the right of election is in them, and the House agreed.

10. Journ.
pa. 320.

Plymouth, 31 December, 1689. For the petitioner it was insisted, that Plymouth was a borough by prescription, and incorporated by Henry the 6th, and that the right was in the freeholders and freemen. For the sitting member it was insisted, "that Plymouth being a borough by prescription, the right of election *could not be in the corporation or freemen, though of late they had interposed in elections, and that it was in the freeholders only.*" The determination was, that the sitting member was duly returned.

13. Journ.
pa. 470.

Hindon, 3 April, 1701. The petitioner insisted, that the right of election was in the bailiff, burgesses, and such inhabitants only as paid scot and

and lot; the sitting member, that it was in the bailiff, burgeses, and inhabitants not receiving alms. The petitioner's counsel insisted, that the law excluded such from voting in elections, who were not contributory to the common charge of the borough. The sitting members council argued, that Hindon was a borough by prescription, *and that burgeses and inhabitants are synonymous terms, and all the inhabitants had a natural right unless usage could be shewed to the contrary.* Evidence was given on both sides, and the committee, against the apparent weight of evidence, resolved, 1st. The right to be in the bailiff, burgeses, and such inhabitants only as pay scot and lot; 2dly. that the sitting member was not duly elected; and 3dly. that the petitioner was duly elected. The House disagreed with the committee on the first resolution, and on reading the 2d. ordered it to be recommitted. The further report was made 13th May, 1701; and it appears, that on the recommitment it was insisted for the petitioner, that he had a majority of votes, which way so ever the right of election should be determined; however he alledged the right to be in the burgators holding of Sir Matth. Andrews, who held by lease from the Bishop of Winchester, and indentures of return, which gave the name of burgators to the electors, made in 1660. 3 Car. 13 Car. 2. and 29 Car. 2. were read. The sitting member insisted that *burgators,*

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right to vote.

13. Journ.
P. 533.

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gators, burgesſes, and inhabitants of a borough were ſynonymous terms, and that the right was in the bailiff, burgesſes, and inhabitants not receiving alms. Evidence was produced on behalf of the ſitting member, and the committee reſolved the right to be in the inhabitants not receiving alms, and the Houſe agreed. The committee, after hearing evidence, alſo reſolved the ſitting member to be not duly elected, to which the Houſe agreed; but to the reſolution, that the petitioner was not duly elected, the Houſe did not agree, and conſequently the return was amended by inserting his name.

2. Willis, p.
126, 127.

3. Journ. p.
336.

The borough of St. Ives was not incorporated till the 16th year of the reign of Charles the Firſt, and it is not known that it was reſented before the laſt parliament of Queen Mary. On the 18th December 1661, the committee reported “ That Mr. Noſworthy was
“ elected by nineteen of the capital burgesſes, and
“ returned by the mayor; and that Mr. Baſſett,
“ ſince deceased, was elected by a far greater
“ number of burgesſes at large. *That in Mr.*
“ *Noſworthy's own caſe upon the election in the laſt*
“ *aſſembly, judgment was given againſt the election*
“ *of the mayor and twelve capital burgesſes; and*
“ *that all the inhabitants had right of election;*
“ *and that the queſtion now being the ſame as it*
“ *was then, the committee was of opinion, that the*
“ *burgesſes at large had right of election; that*
“ Mr.

"Mr. Basset had the majority of voices; and
"that Mr. Nosworthy his election was void."
—The House agreed.

Of the
common law
right to vote.

St. Ives, 8th Dec. 1702. The petitioner's
counsel insisted that this was a corporation and
borough by prescription, and that the right of
election was in the burgessees or inhabitants at
large. The counsel for the sitting member con-
tended, it was in the capital burgessees only; and
that the ancient returns being only by the mayor
or portreeve, and burgessees, could only mean
the freemen of the corporation. But for the
petitioner it was insisted, that *the inhabitants of a
borough by prescription were the burgessees*; and
therefore the inhabitants of this borough ought
to be admitted to vote for members to serve in
parliament. The committee resolved the right
to belong to the inhabitants, not receiving alms;
but the House disagreed and determined it to
be in the inhabitants paying scot and lot.

14 Journ. p.
73.

In all these cases, it seems to have been held
that the common law right (whatever it may
be) ought to prevail, unless some other right,
supported by "prescription and a constant usage
"beyond all memory," can be shewn. The same
doctrine has been contended for in many modern
cases, particularly those of Cricklade and Poole,
reported by Mr. Douglas; and in the cases of
burgage

Prescriptive
rights.
4. Doug.
p. 80.

1. Doug. 291.
2. Doug. 225

Prescriptive
rights.

burgage tenements the question has always been, whether they have immemorially given a right to vote. The payment of the poor tax, by virtue of the statute of the 43 Eliz, which is necessary to entitle a person to vote in a scot and lot borough, may not perhaps be an exception, for, if *before that statute* the ability of an inhabitant was to be inferred from his paying all taxes and rates, and performing all services and burdens within the borough, it might *after that statute* be equally inferred from his payment of the poor's rate, which was levied only on the more substantial inhabitants, and, from its affecting the whole kingdom, afforded a more general and convenient criterion than any other.

2 Dougl. p.
82.

Mr. Douglas puts another instance of a right of voting, which probably originated in modern usage, and rests upon a mistaken application of an act of parliament. "In many cities and towns, which are counties in themselves," says he, "the right of election, depending upon usage, is in the freeholders of 40s. a year;" and this usage he supposes *must* have commenced only since the statute of 8 Hen. 6. c. 7. which made a freehold of 40s. a year the qualification to vote for knights of the shire; and to have for its origin only, the analogy supposed to exist between such places

†

and

and proper counties, and a mistaken notion founded thereon, that the statute extended to them. And this right, he observes, is recognised by the legislature itself, in the statute of the 19 Geo. II. c. 28. by which the provisions of the 18 Geo. II. c. 18. against occasional freeholders in counties at large are extended to cities and towns which are counties in themselves, and "in which persons have a right to vote for electing members, for and in respect of freehold lands, tenements, or hereditaments of the yearly value of 40s."

Prescriptive rights.

From whatever period the *prescriptive* right of voting is to be deduced, it certainly is clearly distinguished from the *common law* right. The latter must be always one and the same, but the former may vary with the usage, which proves its existence; and in the course of this work it will be shewn, that burgage tenants, inhabitants, and corporators, can equally boast of decisions in favour of their respective franchises being founded upon prescription.

The statute of the 1 Hen. 5. c. 1. after requiring that knights and their electors should be resident in their respective counties, ordained that "the citizens and burghesses of the cities and boroughs be chosen men, citizens and burghesses resiant, dwelling, and free, in the same cities

Residence of voters.

Residence of
voters.

"cities and boroughs, and no other in any-
"wise." From the title of the statute, which
runs thus; "what sort of people shall be chosen,
"and *who shall be the choosers of the knights and*
"*burgesses of the parliament,*" it is not clear
whether it was the electors, or the elected, who
were required to be resident, but I am inclined
to refer the clause to the elected, and the more
so as in all probability there would be little oc-
casion for a law to enforce the residence of
electors for cities and burgesses, most of them
being resident from poverty, the pursuit of trade,
or the compulsion of their lords. But however
that may be, we find non-resident voters (of some
descriptions at least) regularly voting at elections
as far back as records or history enable us to
trace them; and the 14 Geo. III. c. 58. re-
citing, that whereas several provisions con-
tained in this and three other acts "have been
"found, by long usage, to be unnecessary, and
"are become obsolete, in order to obviate all
"doubts that may arise upon the same," re-
pealed them all; and residence now certainly
makes no part of the qualification of voters for
any cities or boroughs, except where by custom
or charter it is required.

Variety of
rights.

The difficulty of reducing the different rights
of voting into systematical arrangement is in-
creased

creased by the franchise being enjoyed in some places by more than one description of persons, each capable of almost an infinite variety of modification. Thus it has been adjudged to belong in common to tenants and residents, (*a*) to tenants and corporators, (*b*) to residents and corporators, (*c*) and to all the three classes together. (*d*) Instances are referred to in the note.

Variety of
rights.

In Peterborough, where the right depends on the residence of the electors, there exists a singular circumstance, which ought not to pass unnoticed, for there are two districts within the city, the inhabitants of which vote in different rights. 13th May 1728, the right of voting was resolved to be "in the inhabitants within
" the precincts of the minster there, being *house-*
" *holders not receiving alms*, and in other the in-
" habitants within the said city, *paying scot and*
" *lot.*" At Cirencester is a peculiarity of another kind; for 8th Dec. 1709, it was resolved, that the inhabitants of the Abbey, the Emery, and

21. Journ. p.
162.

16. Journ. p.
235.

(*a*) East Grinstead, 1679, 1689, 1695. Ludgershall, 1698. Great Bedwin, 1707.

(*b*) Guildford, 1699. Norwich, 1701. Nottingham, 1701. Oakhampton, 1710. Reading, 1708. Southampton, 1689.

(*c*) St. Albans, 1714. Hertford, 1705.

(*d*) Litchfield, 1718. Wareham, 1661.

P

Spiringgate

Variety of
rights.

18. Journ. p.
751.

Spiringgate Lane, not receiving alms, have no right to vote; and thus the right is vested in *a part only* of the inhabitants of this borough. And Minehead, 24th Feb. 1717, the right was resolved to be in the *parishioners of Minehead and Dunster, being housekeepers in the borough of Minehead*, and not receiving alms, whereby the parishioners of Dunster, which we may presume is a distinct parish, are put upon the same footing as the parishioners of Minehead, and both are also required to be housekeepers within one district, and parishioners in another. And to give more instances of the same sort, wherever the right of voting is confined to burgage tenants, or to tenants or occupiers of particular houses only, or to a select part, or the whole body of corporators, it must almost universally happen, that some of the inhabitants within the boundaries of the borough will be excluded.

Agreement
of candidates.
p. 300.

It has been observed in the former volume, that no agreement of the candidates or other persons can alter the right of election. It is the duty of the returning officer to found his return on the majority of legal votes; but in his situation, surrounded on all sides with difficulties, and required to perform a duty for which the law has invested him with very insufficient powers, it is not surprising that, trust-
ing

ing to the mercy of the contending parties, he should cheerfully adopt at the poll *any* rules to which he can procure their mutual assent. This tended to increase the uncertainty and confusion which generally prevailed, until the wise provision of the 7 and 8 W. III. c. 7. s. 1. whereby any return of a member, contrary to the last determination in the House of Commons upon the right of election, was made a false return. A very short time after this act was passed, the House of Commons decided that it did not bind them, and regulate their decisions, but only gave a rule for the officer in making his return. Tavistock, 4th Feb. 1696. The petitioner before the committee relied upon a resolution of the House, made on the 8th of March preceding, that the right of voting was "in the freeholders of inheritance, inhabiting within the said borough," and insisted "that that being the last resolution, the right, according to the late act of parliament could not now be controverted." For the sitting member it was contended, "that that act of parliament did not bind the parliament, but only appointed a rule for the officer to make a return by; for probably there might, at some time, be a feint defence; or they whose right was concerned might not be parties, or heard, and so it was not reasonable to con-

Agreement
of candidates.

—
Last deter-
mination
made final.

See vol. I. p.
301, & seq.

11. Journ. p.
690.

Last determination made final.

11. Journ. p. 510.

“ true that act to bind the Parliament, but
 “ that they might determine the right different
 “ from the former resolution.” The sitting
 member also insisted, that the right was in “ the
 “ freeholders of inheritance in possession, inhabiting within the said borough, who were presented at the court;” and that in the case cited as a last resolution, *there had been no defence*. Evidence was received on both sides as to the right, and the committee resolved, and the House agreed, that it was “ in the freeholders of inheritance in possession, inhabiting within the said borough, who have been or shall be presented as such by the jury of inquiry of the borough;” and that the sitting member was duly elected.

But the last determination was made final upon the House, by the act of the 2 Geo. II. c. 24. entitled, *an act for the more effectual preventing bribery and corruption in the elections of members to serve in parliament*. When this bill was sent up to the House of Lords, its provisions were confined to the object mentioned in the title; but the Lords made several amendments, and among the rest added the 4th section, enacting, that “ such votes shall be deemed to be legal, which have been so declared by the last determination in the House of Commons;” which last determination concerning any county, shire,

23. Lords Journ. p. 416.
 23. Com. Journ. p. 364.

“shire, city, borough, cinque port or place, shall
“be final to all intents and purposes whatso-
“ever, any usage to the contrary notwithstanding.” Sir Joseph Jekyll, in the debate about making the standing order in 1735, which will be mentioned presently, is reported to have said,
“This clause was not originally in the bill, but
“was put into it by the other House, and, I believe, with a view to prevent the passing of it,
“or at least, that it was the intention of those
“who first contrived the clause; for they imagined that this House would never agree to
“such an amendment. (a) But when the bill
“came back to this House, the gentlemen who
“promoted the bill were so justly fond of it, that
“they chose to agree to all the amendments
“made by the other House, and this among the
“rest, rather than lose so good a bill. Indeed,
“as to this clause, they had a very good reason
“for agreeing to it; for though it did lay some
“restraint upon the jurisdiction of this House in
“matters of election, yet the majority of the
“House then thought it a reasonable restraint,
“and even a necessary restraint, in order to

Last determination made final.

9. Chandl.
Deb. p. 97.

(a) From the general tenor of this and the other amendments proposed by the Lords, it is probable, that to stop the bill, they intended to provoke a quarrel with the Commons, on the ground of interfering with their privileges respecting money bills.

Last determination made final.

22. Journ.
P. 498.

22. Journ.
P. 406.

“ prevent, in time to come, that frequent contradiction in our determinations with respect to elections, which had in time past contributed to the giving people a contemptible opinion of all the proceedings of this House.” On the 16th of January 1735, the House of Commons made the following standing order: “ Ordered, that the counsel at the bar of this House, or before the committee of privileges and elections, be restrained from offering evidence, touching the *legality of votes* for members to serve in parliament for any *county, shire, borough, cinque port*, or place, contrary to the last determination in the House of Commons; which determination, by an act passed in the second year of his majesty’s reign, intituled, *An act for the more effectual preventing bribery and corruption in the election of members to serve in parliament*, is made final, to all intents and purposes whatsoever, any usage to the contrary notwithstanding.” An order nearly in this form had been proposed to the consideration of the House, (probably with a view to the case of Wells, then coming on) on the 7th of March, 1734, and gave rise to a debate, in which it was argued as before mentioned, that the statute to which it refers was only a re-enactment of the statute of the 7th and 8th Will. III. and was intended to be a guide for the conduct of the returning officer, but not to controul

controul the proceedings of the House itself. Those who opposed the motion, only asking for the delay of a few days, that a matter of such importance to the privileges of the House might be maturely considered, the debate was adjourned. On the 10th of March, the motion was renewed, and the order amended, and reduced to its present form, by inserting the words, "legality of votes for," instead of "right of election of;" and by adding the words "county, shire," after the word "any," and the words "cinque port" after the word "borough." Thus amended it passed, but was not made a standing order till the 16th of January following. From the latter amendments it is clear, that as at first drawn up it did not extend to counties. This order was, on the day after it first passed, read in the case of Wells, and after it became a standing order was of course read in the House, or in the committee of privileges and election, before the petitioner's counsel was allowed to open his case; and the same practice is now generally followed before the select committees.

Last determination made final.

22. Journ.
P. 470.

But there are cases in which the reading of this order may with propriety be dispensed with, as where the question is, whether there exists a last determination, as in the case of Pontefract, 1784. After the petitions were read, the parties were directed to withdraw, and after they were called in again, were asked by the chairman,

1. Lud. p. 6.

P 4

" If

Last determi-
nation made
final

3. Lud.
P. 41, 49.

" If the entries in the Journals of the 28th of May, 1624, and 6th of February, 1770, were " to be read." Whereupon it was agreed, to avoid confusion, and that the whole question might be considered at once, that both the above resolutions should be read without prejudice, *and without reading the standing order of the 16th of January, 1735-6.*

In the Seaford case, 1786, which will be stated in another place, it was contended that the statute of the 2 Geo. II. c. 24. was only retrospective, and confined to the then existing determinations of the House. This was argued from the words of the 4th section, which are, " that " such votes shall be deemed to be legal which " shall *have been* so declared by the last determination in the House of Commons, *which* " *last determination*" is made final, and therefore no resolution upon the right of voting in any place where there had been a determination made before the act could affect such former determination. By the counsel on the other side it was said, and the committee decided the election in their favour, that if this construction was to prevail, there was no authority in the kingdom to decide finally a question upon the right of election in any borough, where no determination had been made before the act. That the act meant to leave the future jurisdiction of the House as it was before, and to render its operation permanent;

ment; and that a subject left doubtful in a determination made before the act was the same, as to the power of the House, as if there had been none; and the House might determine as upon a new case, and their decision would be final and conclusive.

Last determination made final.

The House itself does not seem ever to have entertained doubts of its power to make original determinations on the right of voting after the 2 Geo. II. nor till this case of Seaford does the doubt appear to have been agitated; indeed it arose there collaterally, not upon a determination made subsequent to the statute, as to a right of voting in a borough, which had not been settled before, but on a resolution made after the statute, to explain one made before it. Upon the subject of these explanatory resolutions some observations will be made at the end of this chapter.

Many cases of original resolutions, made after the statute, might be produced; Mr. Luders mentions that of Cardigan, in 1730, the year after the act passed, and that of Denbigh in 1743.

3. Lud.
P. 49. note.

21. Journ.
P. 574.
24. Journ.
P. 550.

The statute of the 10 Geo. III. c. 16. operating as a self denying ordinance, took the cognizance of election cases, in the first instance, entirely from the House itself, and vested it in a select committee appointed as prescribed by that act, which, by section 18. was to determine by a majority of voices, "whether the petitioners or sitting mem-
bers,

Last determi-
nation made
final.

“bers, or either of them, be duly returned or
“elected, or whether the election be void;
“which determination shall be final between the
“parties to all intents and purposes.” And by
section 25. “If the said select committee shall
“come to any resolution, other than the deter-
“mination abovementioned, they shall, if they
“think proper, report the same to the House
“for their opinion, at the same time that the
“chairman of the said select committee shall
“inform the House of such determination; and
“the House may confirm or disagree with such
“resolution, and make such orders thereon as
“to them shall seem proper.” By virtue of this
power of making a special report, it was possi-
ble that the committees might in many instances
have restored to the House its former jurisdiction
of deciding finally on the right of election; but
it is obvious, that by so doing those abuses would
be continued, which it was the express purpose
of this statute to destroy, and the committee
making such special report might by possibility
be placed in the awkward situation of having de-
termined a member to be duly elected, when the
House had disagreed to the right of voting, on
which alone that determination could be sup-
ported. At an early period after the establish-
ment of this new election tribunal, Mr. Douglas
remarked on this subject, that “special reports
“seem

“ seem to meet with so little encouragement,
 “ that one may venture to foretell that they will
 “ not be very frequent.” I do not recollect a
 single special report on the right of voting was
 submitted to the House by a select committee.
 Indeed, the construction just put on the statute
 of 10 Geo. III. may not perhaps be generally
 acceded to; for in the case of Downton, 1784,
 the committee reported to the House, with
 their determination on the election, “ that John
 “ Dagge, gentleman, is the legal returning of-
 “ ficer for the borough of Downton in the coun-
 “ ty of Wilts.” Mr. Luders observes, that it
 may be doubted how far this resolution was
 within the act of 10 Geo. III. c. 16. (s. 25.)
 because it does not seem to be one of those upon
 which the House was to give *their opinion*.

Last determi-
 nation made
 final.

1. Lud.
 p. 264.

It was, however, a desirable thing, that there
 should be devised some mode of obtaining a final
 decision in those boroughs, where the right remain-
 ed unsettled. This was done by the 28 Geo. III.
 c. 52. s. 27. whereby the judgments of select
 committees, made in pursuance of that act, were
 rendered final and conclusive in all subsequent
 elections, to all intents and purposes whatsoever.
 And by the 31st section, the 2 Geo. II. c. 24. so
 far as related to determinations to be made in the
 House of Commons, subsequent to the passing of
 that act, was repealed. So that the right of
 voting at all elections is now governed by the

See this Act,
 vol. 1. p. 304.

Last determi-
nation made
final.

last determination of the House itself, until the passing of the 28 Geo. III. and since that time by the decisions of select committees appointed according to its regulations. (a)

Before

(a) It may be proper here to state the tribunals before which questions upon elections and returns have been tried at different periods of time. There was a standing committee of privileges and elections so early as the year 1588, in Queen Elizabeth's reign. And on 22 Mar. 1603-4, in the beginning of the first parliament of James I. a committee of privileges and returns, consisting of 25 persons, was appointed, and in the Journal it is said, "This is an usual motion in the beginning of every parliament," &c. This practice was pursued at the beginning of every session, except in 1707 and 1708, till the statute 10 Geo. III. but the number of the committee was not always the same. 18 Feb. 1707, it was ordered, that all matters that should come in question, touching returns or elections, should be heard at the bar of the House, and a standing order of the House was made, "that all questions at the trial of election shall, if any member insist upon it, be determined by ballot." The case of Ashburton was accordingly decided by ballot, but this regulation ended with that session. 22 Nov. 1708, a committee of *privileges only* was appointed, and all election questions during that session were heard at the bar of the House. At the beginning of the next ensuing session, a committee of *privileges and elections* was appointed as usual, and continued so to be till the first session after the 10 Geo. III. since which time a committee of *privileges only* has been appointed. So that, except in 1707 and 1708, election causes have been referred to the committee, or heard at the bar in the common course, as the House thought fit to direct. In the two sessions before the act of 10 Geo. III.

took

Dewes.
Journ. p.
438.

1. Journ. p.
149, 150.

1. Dougl. p.
74 &c.

Before the statute of the 7 and 8 Will. III. was passed, the House of Commons made little ceremony of contradicting its former decisions, and determining as interest, caprice, or passion directed, at the moment. Hence come the inconsistent entries at different periods, some very near each other in point of time, respecting the right of voting in the same borough; hence that uncertainty in the law of parliament, which was at last generally felt and complained of. But instances may be found in early times, where the committee and House have alluded to, and treated with respect, former decisions. The case of *St. Ives*, 18 December, 1661, before cited, is of this sort, and in that of *Clithero*, 4th February, in the same year, the House agreed with the committee, that, "*according to the judgment in the last assembly*, such freeholders only as had estates for "life or in fee, had the right of election."

Last determination made final.

pa. 182.

8. Journ.
p. 357.

The reports of the committee of privileges and elections, to which petitions were generally

Report of committees not last determinations.

took place, they were almost all heard at the bar. It is hardly necessary to add, that whenever any act of a committee is mentioned in this work to have taken place prior to the 10 Geo. III. the committee of privileges and elections is alluded to, and that subsequent to that statute, the committee meant is a select committee appointed in pursuance of it or the 28 Geo. III.

referred

Report of
committees
not last de-
terminations.

referred before the 10 Geo. III. are not in any way affected by that statute; they had no binding force of themselves, before it was passed, and they have none now. The power of that committee, as well as of all others, extended only to the making of a report, which the House might ratify and adopt, or not, at pleasure. And in fact, it was no uncommon thing for the House to express dissatisfaction at their labours, and send back the report for further consideration, or disagree with all or part of the resolutions, in which the committees had communicated the result of their inquiries.

Partial deter-
minations.

It has frequently happened, that the general right of voting has been undisputed, and the House has been called upon to decide only upon the right of some particular class of voters, and in such cases the determinations of the House have been afterwards considered as last determinations only so far as related to the particular questions already decided. Of this nature are all resolutions disabling persons who have received alms or charity. Such were the resolutions in the case of Haverford West, 4th of July, 1715, whereby it was declared, that a number of persons who had been illegally made burgessees had not thereby acquired any right of voting in *any future* elections

18. Journ.
p. 199.

elections (a)—of Wendover, 21st of November, 1702, that persons coming by certificate to live in that borough, had not thereby a right to vote—of Westminster, 15th of November, 1680, that the kings menial servants, not having proper houses of their own, within that city, had not a right to give voices—and of Monmouth, 26th of November, 1680, where the committee resolved, and the House agreed, that the election of a burgeses to serve in parliament for the borough of Monmouth doth not belong to the burgeses, inhabitants of the borough of Monmouth only; and then, that the burgeses inhabitants of the boroughs of Newport and Uske have a right to vote. Numberless instances of the same kind might be cited.

Partial deter-
minations.

14. Journ.

P. 43.

9. Journ.

p. 654.

Ib. p. 663.

It frequently happens, that the right of voting may depend on the locality of certain parishes and districts; and whether they are or are not situated within the precincts of the borough, be-

Determina-
tions on bound-
aries.

See Vol. 1.
p. 302.

(a) The resolution in the case of Durham, 11th of May, 1762, declared that two hundred and fifteen persons, made or pretended to be made free since the death of Henry Lambton, Esq; had not a right to vote in *the late* election. The difference of expression in this and the resolution in the text, may serve for an instance of the inaccuracy of the resolutions formerly made by the House of Commons on these subjects; those of the select committees certainly do not labour under the same imputation.

come

Determina-
tions on
boundaries.

19. Journ.
p. 363.

ib.

20. Journ.
p. 191.

come a material point for discussion. This has been decided some times, where residence makes part of the qualification of the voters, in a preliminary resolution to that on the general right of voting; and in such cases it may be presumed that both resolutions must be taken together, to form a last determination within the statute.

Thus Dorchester, 17th of May, 1720. The House resolved, that that part of the Holy Trinity, *alias Dorchester Trinitatis*, which was formerly the parish of Froome Whitfield is no part of the borough, and that the tything of Colilton-row, within the parish of the Holy Trinity, *alias Dorchester Trinitatis*, is no part of the borough. And on the 18th of May, 1720; the right of voting was resolved to be "in the inhabitants of the said borough, paying to church and poor in respect of their personal estates, and in such persons as pay to church and poor in respect of their real estates, within the said borough."

Shrewsbury, 9th of April, 1723. The committee first resolved, the right of election to be only in the burgeses inhabiting in the said borough, or in the suburbs thereof, paying scot and lot, and not receiving alms or charity; and then made three other resolutions, by which several parishes and vills were declared not to be "within the borough of Shrewsbury, or the suburbs thereof;"

and

and one parish, and a great number of vills, were declared "not part of the ancient borough of Shrewsbury, or the suburbs thereof." And the House agreed.

Determina-
tions on
boundaries.

Cricklade, 1776. Resolved, that it is the opinion of this committee, that the houses, which were in the occupation of Thomas Bound, Thomas Kilmaster, senior, Richard Liddel, William Mabson, John Pound, and Robert Strange, at the last election of a member to serve in parliament for the borough of Cricklade, in the county of Wilts, are within the boundary of the said borough.

4. Dougl.
p. 66.

But in general it has been found most convenient not to make resolutions to fix the boundaries; but determinations on the right of voting of the inhabitants or tenants of the disputed places; many instances might be given, but the following may suffice.

Cirencester, 8 December, 1709. The question being put, that the inhabitants of the Abbey, the Emery, and Spiringgate lane (not receiving alms) have a right to vote, it passed in the negative.

16. Journ.
p. 235.

Ashburton, 17th March, 1710. The committee resolved, and the House agreed, that the freeholders of the lands and tenements called Halfhanger, and Halwell lands, lying within the
Q borough

Ib. p. 557.

Determina-
tions on
boundaries.

17. Journ.
p. 711.

borough of Ashburton, and subject to pay a borough rent, have right to vote.

Southwark, 29th June, 1714. The question being put, that the persons inhabiting in the Mint, or Rules of the Queen's Bench, in the borough of Southwark, and paying a rent of ten pounds *per annum*, or upwards, have a right to vote, though they do pay scot and lot within the said borough, it was negatived, by a majority of one only, the numbers being 50 to 49.

Affirmative
determina-
tions.

There is no particular form prescribed in the statutes, for the last determinations of the House; and it has been observed, that they need not be drawn up as they commonly are, in the shape of resolutions. I shall not trouble my readers with minute observations on defects and inaccuracies in these resolutions. It will be sufficient to observe, that, in general, they have been drawn up in the affirmative, declaring the right of voting for the city or borough to be in a particular description of electors; but there are instances, especially where the right has been disputed only in part, where the House has contented itself with an assertion merely, that the persons claiming to vote are entitled so to do. In the first case, the resolution will bind the general right, provided the persons are properly and clearly described;

scribed; but in the second, the resolution only ascertains the privilege of the persons described, but does not further affect the rights of others.

Affirmative
determina-
tions.

Again, resolutions may have been penned only in the negative, containing a simple denial of the right of particular persons to vote, without distinguishing whether they claim to be the whole body of electors, or only a part of them. In either case, there is no pretence to say that such a resolution can of itself operate further than to exclude the claimants on all future occasions.

Negative de-
terminations.

Sometimes, however, the determinations on the right have been worded in such a manner as to exclude all claim from persons not expressly named, as Shaftesbury, 29th February, 1695. The committee reported the right to be "*only* in "the inhabitants of the said borough paying "scot and lot."—Lymington, 29th December, 1691. The committee resolved, first, that this corporation "is a corporation by prescription;" and in a separate resolution, that the mayor and burgeses *only* have the right to elect burgeses; and the House agreed.

Exclusive de-
terminations.

11. Journ.
P. 479.

10. Journ.
P. 598.

Until the last determination of the House was made final, there certainly was not the same in-
ducement

Proper form
of determi-
nations.

Proper
form of de-
terminations.

ducement for drawing up with precision the resolutions respecting the right of voting, as have existed since. They were too often treated as the measures of party, rather than the solemn decisions of a judicial tribunal, (a) and were sometimes penned during the heat of a debate, and without any regard to the evidence, not to answer the purposes of justice, but to seize the temper of the House at the moment, and seat the friends of the prevailing party. It is not therefore wonderful that there should have been contradictory decisions, at different periods, upon the right of voting in any particular borough, or that resolutions should have been incorrectly drawn up; and we must applaud the virtuous effort of the majority, which submitted at last to give up the powers of the House to prevent a repetition of such scandalous practices.

The statute of the 28 Geo. III. c. 52. enacts, that each of the parties shall deliver to the clerk

4. Grey's De-
bates, p. 317.

(a) In the debate on the petition against the election for Stamford, 27th of March, 1677, Sir John Trevor, in answer to an assertion of Sir Robert Sawyer, that petitions were brought in to keep men in awe for their votes in parliament, shows by a keen retort the dreadful corruption which prevailed in the House as a judicial tribunal. "Every man," said he, "knows how Sawyer was in his vote during the dependency of that petition against him. But as soon as the clock struck twelve, and his election was determined, you know what he did—he changed his opinion."

of

of the committee statements in writing of the rights of election for which they respectively contend, and the committee shall come to distinct resolutions on such statements, and report the statements, and their judgment thereon, to the House, and such report shall be entered on the Journals. This seems well calculated to secure accuracy in the form of those resolutions which are to be conclusive ever after; for in this way the right contended for on the one side may be negatived, and that on the other substantiated, in the very words in which the parties themselves have thought fit to express them. Some instances may be found of resolutions of the House, made before the statute of the 7 and 8 W. III. c. 7. drawn up nearly in this form.

Proper
form of de-
terminations.

Dunwich, 8th Dec. 1691. The committee resolved, that the right of election was "not in the freemen of the said borough, commonly called out-sitters, as well as in the freemen inhabiting within the said borough;" and then in a distinct resolution, "that the right is only in the freemen inhabiting within the said borough;" and the House agreed.

10. Journ.
P. 578.

Lymington, 18th Feb. 1695. The committee resolved the right "is not in the mayor, bur-
" gesses, and commonalty of the said borough
" paying scot and lot;" and then in a separate resolution,

11. Journ. p.
454.

Proper
form of de-
terminations.

16. Journ. p.
453.

resolution, that it "is only in the mayor and
"burgesses of Lymington;" and the House
agreed. And 11th Jan. 1710, the committee
reported, the right "is not in the mayor, bur-
"gesses, and inhabitants of the said borough not
"receiving alms;" and then that it "is in the
"mayor and burgesses of the said borough
"only." The House agreed to the first reso-
lution, after a division of 191 to 132, and to the
second resolution without a division.

13. Journ. p.
709.

Hertford, 27th Jan. 1701. The committee
reported as their opinion, that "the right "is not
"in such persons only as are inhabitants, house-
"holders of the said borough not receiving
"alms, and in such freemen, who at the time
"of their freedom granted to them were inha-
"bitants of the said borough, or of the parishes
"thereof," and in a separate resolution, that it
"is in all the freemen, and also in all the inha-
"bitants, being householders, and not receiving
"alms;" and the House agreed.

Explanatory
clauses.

From what has been said already it appears,
that the drawing up of a last determination in
precise and regular form, is not so easy a matter
as may be thought at first by persons not conver-
sant with the nicety requisite in legal proceedings.
In some instances the House has condescended to
add an explanatory clause to its own determina-
tion,

tion. Northampton, 26th April, 1664. The committee resolved, and the House agreed, that the right was in the inhabitants, "being house-holders, and not receiving alms; and that *the sharing in the charitable gift appointed to be distributed at Christmas is a taking of alms.*" And Shrewsbury, 9th April, 1723, before cited, may be considered as another instance.

Explanatory
clauses.

8. Journ. p.
550.

pa. 202.

When from the incorrect manner in which the Journals have been kept, or any informality or defect in the proceedings themselves, there have arisen doubts whether particular entries amount to last determinations or not, the House, or select committee, has decided upon them.

Entry doubt-
ed.

Pontefract, 28th May, 1624. It appears, that there are two Journals of this period, one of them supposed to have been written by the clerk of the House, and the other by his son, who, on account of his father's indisposition, had been appointed and paid by the House, to assist him. That written by the father was in these terms; "Mr. Glanville reporteth for Haverford West," &c. "For Pomfret, two points, 1. Who the electors?—Resolved by the committee, there being no charter, nor prescription for choice, the election is to be made by the inhabitants house-holders residents. Resolved also so now, upon the question.

1. Dougl. p.
386.

1. Journ. p.
714.

Q4

" 2. That

Entry
doubted.

“ 2. That the committee also in respect of the
“ poll demanded, though interrupted by Beau-
“ mont, yet the poll not being pursued, the
“ choice of Sir J. Jackson void, and a new
“ warrant to issue for a new choice.”

That written by the son was as follows: “ Mr.
“ Glanville reports from the committee of pri-
“ vileges;

“ Concerning Pomfret.—Question of Sir John
“ Jackson.—Committee resolved all the inha-
“ bitants householders ought to have voice.

“ 2. Committee resolved, upon the latter writ,
“ no burgess duly chosen; but a new writ to go.

“ *Resolved, that the election ought to be in Pom-*
“ *fret by the inhabitants householders, residents there.*

“ Resolved, that neither Sir J. Jackson, nor
“ Sir Rich. Beomont are duly elected, and that
“ a new writ shall go out for a new election.”

32. Journ. p.
665.

6th Feb. 1770. It became a question, how
far these entries could be considered and read as
a last determination of the House, and the counsel
on both sides were directed to argue this point
separately first. The House then negatived (161
to 32) a motion that they should “ be admitted
“ to be read to the counsel at the bar as the last
“ determination of the House touching the le-
“ gality of votes for members to serve in par-
“ liament.” Upon this, the counsel for the pe-
titioners desired leave to withdraw their petition.

The

The counsel for the sitting member objected, and desired leave to offer evidence to establish the right of election. The House refused to permit the petition to be withdrawn, and the counsel for the petitioners declared, they would give the House no farther trouble. The counsel for the sitting members then proceeded to call witnesses and produce evidence; and the House resolved, that the right of election "is in persons having within the said borough a freehold of burgage tenure, paying a burgage rent;" and that the sitting members were duly elected.

In 1775, the question before a select committee was, whether the entries in 1624, or the resolution in 1770, was to be considered as the last determination on the right, within the meaning of the statute. For the sitting members two points were argued; first, that it was not competent for the committee to discuss the validity of the entries in 1624; for that in 1770, the House, which was the only court of competent jurisdiction, had decided that they were not a last determination, and had refused to let them be read as such; and 2dly, that if competent to go into the discussion, those entries did not amount to a last determination. The committee resolved, "that the counsel be called in, and restrained from offering any evidence touching the legality of votes for members to serve in parliament

Entry
doubted.

1. Dougl. p.
379.

1. Lud. p. 9.
note.

Entry
doubted.

39. Journ. p.
259, 368.

J. Luders,

p. 1.

1. Frazer,
p. 183.

liament for the borough of Pontefract, contrary to the last determination of the House of the 6th of Feb. 1770." The counsel for the petitioners then declined giving further opposition, and the committee resolved, that the sitting members were duly elected.

In 1783, upon a single vacancy, the mayor returned the candidate chosen by the burgage tenants, but the select committee resolved, that he was not duly elected, and that his opponent was. Thereby deciding (contrary to the determination of the House in 1770, and of the last committee) in favour of the inhabitants, whose right was founded on the entries of 1624.

In 1784, the same question came again into discussion, and the committee resolved, "that the resolution of 1624 is a last determination under the act of 2 Geo. II. c. 24. s. 4." And now the return being made in favour of the inhabitants, the sitting members were resolved to be duly elected.

In 1791, the question being again revived, the parties were required to deliver in statements of the rights of voting, for which they respectively contended. The statement of the petitioners was founded on the resolution of 1770; that of the sitting members on the entries of 1624; and the committee decided in favour of the statement of the sitting members. So that there

there has been one decision of the House, and the decision of the committee of 1775, in favour of the burgage tenants, and the decision of three subsequent committees, with the entries in 1624, in favour of the inhabitants.

Entry
doubted.

It has been observed before, that the reports of the committee of privileges and elections were binding only so far as they were ratified and adopted by the House. And in some cases, where the House has come to no *express* resolution on the right of election, questions have arisen, whether from all the proceedings taken together, a last determination, meaning one final to all intents and purposes, may not be inferred by necessary implication. Thus, it has sometimes happened, that the House has disagreed to the resolutions of the committee of privileges in favour of a particular right of voting and the candidates whose seats depended on its establishment, and resolved their opponents to be duly elected without coming to any *express* resolution on the right.

Negative
proceedings
ambiguous.

Helfton, 10 Dec. 1660. The report was, that
“ it appeared to the committee, that the mayor
“ and inhabitants at large have the right of elec-
“ tion of members to serve in parliament for
“ the said borough; and that the committee are
“ of opinion, that Sir Peter Killigrew, having
“ the

8. Journ. p.
203.

Negative
proceedings
ambiguous.

"the greater number of votes of the said inhabitants at large, is duly chosen, and ought to sit in this House. And the question being put, that this House doth agree with the committee, that the right of election of members to serve in parliament for the said borough is in the mayor and inhabitants at large; and that Sir Peter Killigrew is duly chosen, and do sit in this House," it passed in the negative, 92 to 60.

10. Journ. p.
457.

Sandwich, 31st Oct. 1690. The committee reported as their opinion, that "the freemen of the port of Sandwich inhabiting within the said port, although they receive alms, have a right to vote in electing barons to serve in parliament." On the question being put to agree with the committee in this resolution, it passed in the negative, and the House agreed that the sitting member was duly elected, on a division 175 to 174.

2. Dougl. p.
225.

Whether such proceedings should be considered as a last determination of the House was disputed, but not decided; in the case of Poole, 1775. The question was, "whether the right of election was in the burgesses of the borough exclusively," or "in the inhabitants and householders within the borough, paying scot and bearing lot." The sitting members insisted, that the right was in the burgesses only, and that there

there was a last determination in their favour, made on the 9th Feb. 1688-9. The petitioners denied that it was a last determination. From the entry of that date it appeared, that the question had been nearly the same as now in dispute. And the committee there reported their opinion, "that the right of election of burgesſes "to ſerve in this preſent convention for the "town and county of Poole, is in the mayor, "burgeſſes, and commonalty of the ſaid town "and county, who pay ſcot and lot;" and next, that the petitioner was duly elected. But the question, that the Houſe ſhould agree with the committee on the right of election, was carried in the *negative*, as was the question to agree that the petitioner was duly elected; and then it was reſolved, that the ſitting member was duly elected. Whether the diſagreement of the Houſe, and reſolving the ſitting member to be duly elected, amounted to a laſt determination, was argued at length. For the petitioners it was inſiſted, that this diſagreement, and reſolution of the Houſe, could not be a laſt determination within the meaning of the ſtatute; for the Houſe, if it had intended to decide on the right of election, would have come (as in other caſes) to a direct reſolution on the right. For the ſitting members it was contended, that no technical words are neceſſary to make a laſt determination; nor

Negative
Proceedings
ambiguous.

Negative
proceedings
ambiguous.

2. Dougl. p.
250.

is it necessary that it should be done in the technical form of a resolution; for if it was, the word *resolution* would have been used in the statute; and the sitting member could not possibly have been adjudged duly elected, but upon the ground of the right being exclusively in the mayor and burgessees. The committee resolved, that the parties should proceed to give evidence of the right of election, which they did accordingly. But the chairman at the same time expressly declared, that the committee did not by this resolution mean to decide, that the proceedings in 1688-9 *did* or *did not* contain a determination of the House within the meaning of the statute. In truth, it was not necessary to decide that question, for the committee determined finally (in consonance with the former decision) that the sitting members returned on the exclusive right of the burgessees were duly elected.

Sometimes too, when the committee has resolved that a particular class of claimants has no right to vote, the House may have disagreed, and seated the member whose seat depended on the establishment of their right. Whether this amounts to a last determination has never yet been in contest. In the case of Southwark, 29th June, 1714; before cited, the House disagreed, but it does not appear that the seats were affected by it.

pa. 204.

There

There is another class of cases, where the committee have agreed to, and reported particular propositions, and a general conclusion from them, and the House has contented itself with adopting the conclusion without taking any notice of the particular propositions. Thus where the committee have first decided upon the right, and then seated the candidate whose election depended upon it, the House has contented itself with agreeing to only so much of the report as concerned his being duly elected, without putting any question on the remainder. According to Mr. Douglas, Glanville in the case of Winchelsea, seems to consider, that by so doing the House adopted not only the conclusion drawn by the committee, but also the particular propositions. Glanville says, "In this case, divers
" points were moved, and debated in the com-
" mittee, and reported to the House, with their
" opinions and reasons; all which, under the ge-
" neral order and judgment of the House there-
" upon, were resolved, and adjudged accord-
" ingly."

Affirmative
proceedings
ambiguous.

1. Dougl.
P. 415.

Glanv. p. 17.

Many cases of this kind occur in the Journals; and in that of Camelford, which was heard in the month of November last, this point was raised, but the party agitating it did not press for a decision.

Camelford, 3d August, 1660. The committee reported, that "it appeared that the
" freemen

8. Journ.
P. 110.

Affirmative
proceedings
ambiguous.

“ *freemen and inhabitants have the right of election* ;
 “ and that, comparing the number of votes given
 “ to Henry Nicholas, Esq. who is returned by
 “ one indenture, and to William Cotton, Esq.
 “ who is returned by another indenture, the
 “ committee found Mr. Nicholls had a greater
 “ number of the votes of freemen than Mr.
 “ Cotton ; but it was objected, on Mr. Cotton’s
 “ part, that divers of the voices given to Mr.
 “ Nicholls were such as paid not scot and lot,
 “ and therefore had not right to vote ; and upon
 “ hearing of testimony given in that behalf,
 “ were of opinion that Mr. Cotton had a greater
 “ number of votes of such as paid scot and lot
 “ than Mr. Nicholls, after deduction of such
 “ votes for him as paid not scot and lot ; and that,
 “ therefore, Mr. Cotton was duly elected, and
 “ ought to sit in this House.”

On a division (103 to 98) it was resolved,
 that this House doth agree with the committee,
 that Mr. Cotton is duly elected to serve in this
 present parliament for the borough of Camel-
 ford, in the county of Cornwall, and do sit in
 this House.

At the last general election, Lord Preston, and
 Robert Adair, Esq. stood on the interest of the in-
 habitants ; W. J. Denison and J. Angerstein, Esqrs.
 on that of the freemen. The latter were returned,
 and the former petitioned. The question depended
 on the right of voting, and the counsel for the peti-
 tioners

tioners contended at the outset, that the proceedings in 1660 amounted to a last determination; but the committee was not called upon to decide upon that point, the petitioners counsel agreeing, without giving it up, to proceed first to the production of evidence, which, they insisted, would prove the right of voting they relied on. Evidence was accordingly produced on both sides, and the final decision was in favour of the sitting members, founded on a right of election differing from that which their counsel had endeavoured to establish.

Affirmative
proceedings
ambiguous.

The case of Chichester is still stronger, for there the House, without noticing the right of election, not only resolved the member, in whose favour the committee had decided, to be duly elected, but actually ordered the mayor to be committed to the custody of the serjeant at arms, for having made a return contrary to the right of election, which had been reported by the committee. Chichester, 21st May, 1660. Upon a double return, the committee reported, that "upon examination of the fact, the question appeared to be, whether the free citizens alone, or the commonalty at large, ought to elect; and that upon view of their own books, it appeared, that for one-and-twenty parliaments, the commonalty as well as the citizens had had voice in the electing of members to serve in parlia-

8. Journ.
P. 40.

R

"ment;

Affirmative
proceedings
ambiguous.

ment; and that those upon the committee were
of opinion that the commonalty of the said
borough, together with the free citizens, have
right of election; and that John Farrington,
gentleman, is accordingly duly elected, and
ought to sit.

Resolved, that this House doth agree with
the committee, *that the said Mr. Farrington is*
duly elected, and do sit in this House; and that
the mayor of the said city be forthwith called
in, and amend the said return accordingly.

He also reports from the said committee, that
the mayor of Chichester had several ancient
precedents offered unto him, to shew the com-
monalty's right to elect for that city, and that
the recorder of the city offered him his advice
therein, nevertheless the mayor refused to own
the precedent, or hearken to the said advice.

Ordered, that the said mayor be forthwith
committed to the custody of the serjeant at
arms attending this House, till further
order.

The mayor of Chichester, according to the
order of this day, came, together with the clerk
of the crown, to the clerk's table, and amended
the return for the city of Chichester, the name
of John Farrington, gentleman, being inserted
in the place of William Cawley, Esq.

The mayor of Chichester was this day
called

“ called to the bar of the House, and kneeling
“ there, Mr. Speaker did let him know, that the
“ House had considered of the return by him
“ made for the city of Chichester; and that they
“ look upon his carriage therein as wilful con-
“ tempt, having refused to admit the voices
“ of the commonalty to make elections, it
“ appearing, that for one-and-twenty several
“ parliaments, they, as well as the citizens, had
“ votes for the electing of members to serve in
“ parliament, and that therefore the error was
“ wilful, and done in contempt of this authority,
“ and in breach of his trust; and that though his
“ offence deserved a more severe punishment, yet
“ there being a disposition in this House to ex-
“ tend mercy, they have contented themselves
“ with this restraint; and that therefore he stands
“ committed for his contempt to the serjeant at
“ arms,” from whose custody he was discharged
on the 24th.

Affirmative
proceedings
ambiguous.

8. Journ.
P. 44.

It should seem, that where the right is not in question, the select committee will not inquire whether the construction put upon the last determination by agreement of the counsel, is consistent with the words of it. Taunton, 28th July, 1715. The last determination states the right to be “ in the inhabitants within the said bo-
“ rough, being potwallers, and not receiving

Construction
not disputed.

18. Journ.
P. 241.

Construction
not disputed.

1. Dougl.
p. 371.

" alms, or charity;" yet in 1775, it was admitted by the counsel on both sides, that to be " inhabitants being potwallers," both before and since that determination, it was necessary to have legal parochial settlements, and the committee made no objection.

Resolutions
explained.

Before the statute of 2 Geo. II. the House appears not to have been very scrupulous about making resolutions relating to the right of voting in any particular borough, directly contradictory to its former decisions; but instances may be produced of its having acted with greater delicacy, and whilst it maintained the authority of the first determination, permitting evidence to be given to explain it. Of this kind is the following case.

14. Journ.
p. 62.

18. Journ.
p. 149.

Westbury, 1st December, 1702. The House resolved, that the tenants of burgage houses by lease for years absolute had a right to vote; but 1st of June, 1715, evidence was admitted to prove that the right was not only in whole and half, but also in quarter burgages, paying 1*d.* rent; and the committee resolved the right to be in every tenant of any burgage tenement in fee, for lives, or ninety-nine years determinable on lives, or by copy of court roll, paying a burgage rent of 4*d.* or 2*d.* yearly, being resident within the said borough, and not receiving alms; and the House agreed.

The effect of an explanatory resolution, made before the 2 Geo. II. has been brought into discussion before a select committee. Sudbury, 19th January, 1702-3. "Resolved, that the sons of freemen, born after their fathers were made free, and those that have served apprenticeships in the borough of Sudbury, in the county of Suffolk, have a right to vote in the election of members to serve in parliament for the said borough, *without any admission in form to their freedom*, or taking the oath of freemen." Afterwards, 6th December, 1703, the House resolved the right to be "only in the sons of freemen born after their fathers were made free, and in such as have served seven years apprenticeship, or are made freemen by redemption." In 1775, a preliminary question was made before a select committee, whether this latter resolution was to be considered as a *complete independent* resolution, or only as explanatory of the former one. Many persons who had tendered their votes for the petitioners had been rejected at the election, because they did not produce evidence of their admissions to their freedom properly enrolled on stamps; and if the right of election was to be taken as declared in the resolution of January, 1702-3, no formal admission would be necessary. For the petitioners it was contended, that the resolution of January, 1703,

Resolutions explained.

14. Journ.
P. 119.

Ib. p. 245.

2. Dougl.
p. 133.

Resolutions
Explained.

14 Journ.
p. 244

was merely an explanation of the former one, as to the number of years necessary to such an apprenticeship as would bestow a right to vote, the *only* question on the second cause having been, whether, under the first resolution, those who had served *five* years as attornies clerks had a right to vote. For the sitting members, it was insisted, that the last was a complete independent resolution, and so the last determination; that it had no reference to the former one; which in explanatory resolutions there always is; and that it declared the right of voting to be in a class of persons not mentioned there, viz. freemen by redemption; that if the resolution of December 1703 is a last resolution, persons claiming to vote under it must prove themselves to be completely freemen, which they cannot be without admission, and the only legal evidence of admission is the enrolment thereof on stamps on the books of the corporation. The committee, after having deliberated, contented themselves with resolving *generally*, that "the counsel for
" the petitioners should produce evidence to
" shew by what right the rejected persons claim-
" ed to vote." Evidence was accordingly produced, and the petitioners (Hanmer and Blake) declared duly elected, which, Mr. Douglas presumes for strong reasons, was done on the ground that these rejected votes were good ones.

But

But as they had voted at all former elections for twenty years and upwards before the last election, had offered to prove that they were intitled to their freedom, and demanded to be enrolled, which was refused, it does not satisfactorily appear that the committee proceeded at all upon the petitioners construction of the beforementioned resolutions.

Resolutions
explained

By the standing order of the House of the 16th January, 1735, counsel were "restrained" from offering any evidence touching the legality of votes, contrary to the last determination of the House. But though evidence cannot be offered to contradict, it may to explain the terms of a last determination. Whenever, therefore, evidence is offered, it is for the committee to decide whether there is such an ambiguity as requires such explanation, and whether the purposed solution of it is consistent with the words of the determination itself. In the following cases evidence was received to explain some supposed ambiguities in last determinations.

Determinations
explained.

pa. 192.

Plymouth, 9th June, 1660. By the last determination of the House concerning the right of election, it was resolved to be "in the mayor and commonalty of the said borough." 15th January, 1739. The counsel for the petitioner insisted that the word "commonalty," in that determi-

8. Journ.
P. 59.

23. Journ.
P. 414.

Determina-
tions ex-
plained.

23. Journ.
p. 419.

3. Lud. p. 48.

29. Journ.
p. 204.

1. Journ.
p. 382.

nation, extended only to the freemen of the said borough, exclusive of the freeholders thereof. The counsel for the sitting member contended, that it included the freeholders. Evidence was given on both sides to explain the construction of it. And on 17th January, the House resolved, that the word "commonalty," mentioned in that determination, "extended to the freemen only of the said borough." Whereupon the sitting member acquainted the House, he would not give any more trouble, and the petitioner was declared to be duly elected. In 1780, the freeholders again claimed to vote at an election, and being rejected, petitioned. At the trial in April, 1781, the committee resolved, that "their counsel should not be permitted to produce evidence to contradict the resolution of 1739, which was explanatory of the last determination of 1660.

Bridport, 2d Mar. 1762. The last determination of the House, made on the 12th April, 1628, whereby it was resolved, that the commonalty in general ought to have voices in the election of burgeses, was read. The counsel for the petitioners insisted, that the word "commonalty," in that resolution, meant "all those who, at the time of the election, and for forty days before, have been housekeepers and inhabitants, legally settled, and not receiving alms." The counsel
" for

" for the sitting member insisted, that it meant
" inhabitants, householders paying scot and lot."
Evidence was produced on both sides, and the
House resolved, that " in the abovementioned
" last resolution the words, ' commonalty in ge-
" neral,' extend only to inhabitants, householders
" paying scot and lot."

Determina-
tions, ex-
plained.

Dover, 24th Mar. 1623. It was resolved by
the House, that " the freemen, and free bur-
" gesses inhabitants of Dover, ought to have
" voice in the election of their barons." 12 Mar.
1770. The committee of privileges reported,
that the petitioner insisted that non-resident free-
men had not a right to vote, and that the sitting
member, to support their right, had offered evi-
dence of the usage of the port at former elections,
which being objected to as inadmissible evidence,
the committee had resolved to receive it; and af-
ter it was heard, had further resolved, " that it
" was their opinion that the non-inhabitant free-
" men, as well as the inhabitant freemen, and
free burgesses," had voice in elections. To this
resolution the House agreed.

1. Journ.
pa. 748.

32. Journ.
p. 780.

Dorchester, 18th Mar. 1720. The right of
election was resolved to be " in the inhabitants
" of the said borough paying to church and poor,
" in respect of their personal estates; and in
" such persons as pay to church and poor in re-
" spect of their real estates within the borough."
In 1775, the committee, after evidence produced,
resolved,

19. Journ.
p. 363.

1. Doug.
p. 347.

Determina-
tions ex-
plained.

1. Fraser,
p. 319. 361.

10. Journ.
p. 469.

1. Dougl.
p. 318.

resolved, that "pursuant to the last determina-
tion, such persons as pay to church and poor,
" in respect of their real estates within the said
" borough, though not inhabitants or occupiers,
" were entitled to vote." And again in 1791,
another committee resolved, after receiving evi-
dence, that, "pursuant to the last determination
of the House of Commons," the right of election
"is in the inhabitants of the said borough pay-
" ing to church and poor, in respect of their per-
" sonal estates, and in such persons as pay to
" church and poor in respect of their real estates,
" within the said borough, although not inhabi-
" tants or occupiers, *and although their names do*
" *not appear upon the poors' rate.*"

New Radnor, 12th Nov. 1690. The right was
resolved to be "in the burgeses of Radnor,
" Ryader, Knighton, Knucklas, and Keventiel
" only;" and in 1775, it was contended for the
petitioner, that the word "burgeses," in the
above resolution, which was admitted to be the
last determination, meant *all burgeses whether re-
sident or not*; and that the counsel for the sitting
member were precluded from going into evi-
dence in explanation of it by the standing order
of 1735. For the sitting member it was insisted,
that the last determination was ambiguous, and
that they were entitled to shew that the House
must have meant by the word "burgeses," the
burgeses inhabitants only. The committee were
of

of opinion, that they were not precluded from such explanation by the standing order of 1735; and by deciding ultimately in favour of the petitioner, must have adopted the extended sense of the word "burgesses."

Bedford, 1775. The last determination, 12th April, 1690, was, that the right of election "is in the burgesses, freemen, and inhabitants, being householders of Bedford, not receiving alms." It was contended, that the words, "being householders of Bedford," were to be applied as well to *burgesses and freemen as inhabitants*, and therefore that non-resident burgesses and freemen were excluded from voting. But the committee resolved "that the words, *being householders of Bedford*, contained in the resolution of the House of Commons of the 12th of April, 1690, do not refer to the burgesses and freemen, but to the inhabitants only." And at all subsequent elections, non-resident freemen and burgesses have voted.

Newark, 1791. By the last determination, 11th Jan. 1699, the right was resolved to be in "the mayor, aldermen, and all the inhabitants who pay, or ought to pay, scot and lot." The counsel for the petitioners delivered a statement of the right in the words of this determination. The counsel for the sitting member explained the construction of it to be, "that the mayor and aldermen,

Determinations explained.

2. Dougl.
p. 70.
10. Journ.
p. 376.

1. Frazer.
p. 265.
13. Journ.
p. 111.

Determina-
tions ex-
plained.

“ men, and all the inhabitants within the said
 “ borough, who, being rated to the parish levies
 “ or assessments, have actually paid or will pay
 “ in the course of the collection, or are compel-
 “ lable by law to pay, or are left out of the rate
 “ by the fraud and criminal conduct of those who
 “ have the management of the rates, or of the
 “ justices at the sessions to which the appeal from
 “ the rate lies, or who, by being improperly left
 “ out of the rate, have not had time to appeal,
 “ or try their appeal, before the election of
 “ members to serve in parliament, or who have
 “ come into the occupation of rateable property,
 “ subsequent to the allowance of the rate im-
 “ mediately preceding the election, and have not
 “ been therein inserted, have a right to vote at
 “ the election of members to serve in parliament
 “ for the said borough.” The committee ne-
 “ gativèd both the statements, and determined
 the right to be “ in the mayor, aldermen, and
 “ all the inhabitants paying scot and lot within
 “ the said borough,” and so reported to the
 House.

The following is a very strong case to shew
 the binding effect of the 2 Geo. II. upon the de-
 terminations of the House; for even during the
 trial of a cause, it did not think itself competent
 to alter the terms of a resolution made on a for-
 mer

mer day, but proceeded to make an explanatory resolution to restrain their effect.

Determina-
tions ex-
plained.

Bridgewater, 12th Mar. 1769. The House resolved, that "the inhabitants of the borough of "Bridgewater, paying scot and lot, have a right "to vote," &c. but negatived a motion, that the mayor, aldermen, and capital burgessees, not being inhabitants paying scot and lot, have a right to vote. Two days afterwards, 14th Mar. the House heard evidence to shew, that the words of the above resolution were not meant to extend to the inhabitants of the eastern and western divisions of the parish of Bridgewater, and resolved, that "the inhabitants of the "eastern and western divisions of the parish of "Bridgewater have no right to vote," but that the right of election "is in the inhabitants of that "division of the said parish, which is commonly "called the borough, paying scot and lot within "the said division, and in them only."

32. Journ.
p. 302.

Ib. p. 313.

Preston, 18th Dec. 1661. The question was, "whether the mayor and twenty-four burgessees "had only voices, or the inhabitants at large;" and the committee reported, and the House agreed, that all the inhabitants of the borough had voices in the election.

8. Journ.
p. 336.

At the general election in 1768, Sir Henry Hoghton and General Burgoyne opposed Sir Peter Leicester and Sir Frank Standish, who were returned; the former petitioned against them.

3. Lud.
p. 223.

Determina-
tions ex-
plained.

32. Journ.
P. 27. 79.

them. The merits of the election were tried at the bar of the House, on the 29th of Nov. 1768. The counsel for the then sitting members insisted, that in the determination of the right in 1661, the words, "all the inhabitants," mean only "such in-burgessees of the last guild, or those admitted since by copy of court-roll, as are inhabitants of the place." The counsel for the petitioners were heard, and proposed to produce evidence, in order to shew that the right of election was in all the inhabitants, according to the said last determination of the House; it was ordered, that the counsel for the sitting members should be directed to acquaint the House with what they had to offer in support of their construction of the words, "all the inhabitants," in the said determination. The counsel for the sitting members were then heard in support of their construction: and having proposed to produce evidence to shew that the words, "all the inhabitants," mentioned in the said determination of the House, mean only "such in-burgessees of the last guild, or those admitted since by copy of court-roll, as are inhabitants of the place;" the question was put, that the counsel for the sitting member should be admitted to give evidence, as above mentioned, and negatived 183 to 113. The counsel for the petitioners then proposed to shew, that their clients had a majority of the inhabitants at large upon the poll, which

was

was admitted by the opposite party: and the House thereupon resolved, that the petitioners were duly elected.

Determina-
tions ex-
plained.

General Burgoyne, one of the petitioners, afterwards brought an action against the person who had been mayor at the time of the election, for a false return, but the defendant had a verdict, because the jury thought he had not acted maliciously.

2. Lud.

P. 246.

At the general election in 1774, Sir Henry Hoghton and General Burgoyne were returned, without contest. But the dispute was renewed, in 1780, by Mr. Fenton, who stood upon the claim of the in-burgessees inhabitants. The former members were returned, and Mr. Fenton petitioned the House against the election and return of General Burgoyne, as did some of the burgessees in his interest.

3. Lud.

P. 225.

These petitions came on to be tried by a select committee, on the 28th of March, 1781. The counsel for the petitioners opposed the reading of the resolution of 18 Dec. 1661, as the last determination of the right. But after argument, the committee resolved that it should be read as such. Then the case being opened, and a witness called, the counsel for the petitioners proposed to produce evidence, to shew that by the words, "all the
" inhabitants," in the last resolution, were meant
" all the *in-burgessees resident*, and no other per-
" sons."

Ib.

Determina-
tions ex-
plained.

“ sons.” This was opposed on the part of the sitting member, and counsel on both sides were heard upon the question. The committee resolved, that the petitioners might produce the evidence proposed. Evidence was produced on both sides, and at the close of the trial on the 7th of April, the committee resolved, “ that the words, “ *all the inhabitants*, in the last determination of the “ House of the 18th of Dec. 1661, do not mean “ the in-burgessees inhabitants only:” in consequence whereof they determined that John Burgoyne, Esq; was duly elected. The committee at the same time resolved, “ that it being their “ opinion, that the resolution of 18 Dec. 1661, by “ which all the inhabitants of the borough of Preston are declared to have voices in the election, “ is a last determination, within the meaning of “ the act 2 Geo. II.; but it being also the opinion “ of the committee, that such a right of election “ is too indefinite,

“ Resolved, that the chairman be directed to “ move for leave to bring in a bill to ascertain “ the description of inhabitants, who shall, for the “ future, have voices in the election; humbly recommending it to the House, that the right be “ confined to all in-burgessees resident, and to all “ other inhabitants householders, paying scot and “ lot.”

When the chairman informed the House of the

the determination of the election, he likewise reported the above resolutions. It was then ordered, that the report should be taken into consideration on the 1st of May following; that the minutes of the committee's proceedings should be laid before the House; and that the papers read in evidence before the committee should be produced. The minutes were accordingly presented, and ordered to be printed. The several papers of evidence were likewise presented, and ordered to lie upon the table. But on the 1st of May, the further consideration of the report was ordered to be put off for three months; and in the following session the subject was not resumed.

Determina-
tions ex-
plained.

38. Journ.
p. 408.

Ib. p. 411.

Ib. p. 419.

Ib. p. 433.

In 1785, the case for the petitioners appeared to be the same as had been agitated in 1781; and evidence was tendered for the same purpose as it was then produced.

3. Lud.
p. 228.

After the petitioning counsel had finished opening, a request was made on the other side, that the petitioners would state, in writing, for the purpose of entering on the minutes of the committee, the nature of their claim, and the purpose for which they proposed to produce the evidence in question. This being agreed to, the following statement was delivered to the chairman, viz.

" The petitioners counsel offered to produce
" the returns to parliament, made by the mayor,

S

" bailiffs,

Determina-
tions ex-
plained.

“bailiffs, and burgeses, or similar descriptions of
“the corporate body, to prove that the right of
“voting has always been (exclusively of all other
“persons) exercised by, and is in, the in-burgeses
“inhabitants admitted at the last guild, or those
“by copy of court-roll admitted since the last
“guild, (which description includes all the mem-
“bers of the corporation), as evidence to explain
“the meaning of the words, “all the inhabitants,”
“in the resolution of 1661.”

The counsel for the sitting members objected to the admissibility of this evidence, and the counsel for the petitioners were heard in reply.

The committee, after hearing the above arguments, informed the counsel, that a motion *that counsel be permitted to produce evidence, to prove that the words, “all the inhabitants,” in the last resolution relating to the right of voting, in the Borough of Preston, explained by usage and fair construction, mean the “in-burgeses inhabitants admitted at the last guild, or those by copy of court-roll admitted since the last guild,” exclusively of all other persons, had passed in the negative.*

The counsel for the petitioners hereupon informed the court, that they declined offering any thing further for the petitioners.

The committee then proceeded to declare *the sitting members duly elected.* Of which the chairman

man informed the House on the same day, April 22d.

Ludgershall. The last determination was made on the 11th February, 1698, that the right of voting was "in such persons, who have any estate of inheritance, or freehold, or leasehold, determinable upon life or lives, within the borough." Before a select committee in 1791, it was argued on one side, that the words of this resolution so clearly meant *all* freeholders or leaseholders as not to admit of any doubt; on the other side it was contended, that these words were ambiguous, and tendered evidence to restrain the right to the owners of ancient houses, or the scites of ancient houses, and the evidence was received. The committee resolved, "that pursuant to the last determination of the House of Commons, the right of voting for members of parliament for the borough of Ludgershall is in such persons as have any estate of inheritance, or freehold, or leasehold, determinable upon life or lives, within the borough, not confined to entire ancient houses, or the scites of ancient houses, within the said borough."

The last determination on the right of voting for Seaford bears date 10th Feb. 1670-1, the question then was, "whether the right of election was in the bailiff, jurors, and freemen

Determinations explained.

12. Journ.
p. 499.

9. Journ.
p. 200.

Determina-
tions ex-
pained.

29. Journ.
p. 83.

Ib. p. 84.

Ib. p. 89.

"only, or in the populacy." The committee resolved, and the House agreed (108 to 102) "that the bailiff, jurors, and freemen, had not "only voices in election, but that the election "was in the populacy." In the year 1761, (10th Dec.) it was admitted, that this was the last determination, and so final; but the counsel for the petitioner offered to produce evidence to shew, that the words, "bailiff, jurors, and "freemen," meant such bailiff, jurors, and freemen only as are resident within the town and port, and that the word, "populacy," meant inhabitants at large of the town and port of Seaford, being masters of families, and not receiving alms. The production of evidence to shew that the words, "bailiff, jurors, and freemen," were to be taken, in such a confined construction was objected to, and the House decided that such evidence should not be given. On the 11th Dec. the counsel for the petitioner produced evidence of usage for the inhabitants at large to vote at elections, to support his construction of the word "populacy," and to this there was no objection made. The counsel for the sitting members seem to have admitted that the word "populacy" was of doubtful signification, and on 15th Dec. produced evidence to shew that in that determination of the House it meant, "inhabitants housekeepers paying scot and lot."

At

At length the House resolved, that in the last determination of the right of election of barons to serve in parliament for the town and port of Seaford, made the 10th Feb. 1670, reciting it, the word "populacy," therein mentioned, extended only to the inhabitants housekeepers of the said town and port paying scot and lot.

Determinations explained.

In 1775, the petitioners counsel insisted, that the explanatory resolution of 1761 was inconsistent with the true sense of the determination in 1670, which, being the last, was final to all intents and purposes. On the other side it was argued, that the resolution of 1761 was to be considered as forming part of the decision of 1670, and *both taken together* made a last determination final to all intents. The committee after deliberating for several hours (on the Saturday) adjourned to Monday (20th Nov.) and after deliberating again some time, the following question was put, "that the committee do permit the counsel for the petitioners to produce evidence to call in question the resolution of the House of Commons in 1761, touching the right of election for the town and port of Seaford, by which resolution the right of voting in the said town and port, as in the *populacy*, is declared to extend to the inhabitants housekeepers of the said town and port paying scot and lot, there having been a previous resolution touching the

3. Dougl.
P. 30.

Determina-
tions ex-
plained.

3. Lud.
P. 33.

“right of election made in 1670;” and it was resolved in the negative. And the counsel being called, the chairman informed them, that the committee had resolved, “that the counsel should not be permitted to call evidence to “contradict the resolution of 1761.”

In 1786, the same question was renewed. On one side it was argued, that the resolution of 1670 was the last determination before the 2 Geo. II. and by that statute as firmly established as if it had been recited in it, therefore the resolution of 1761 was only the opinion of the House, and could no more affect the right than the decision of a court of competent jurisdiction, expressing the particular opinions of the judges. If the House had the power to explain last determinations, the act would be nugatory, for it would be easy, under pretence of explaining, to contradict a former decision; that the words of the statute are retrospective only to determinations made before it passed, and therefore one made prior to the act cannot be affected by any determination made subsequent to it. It can at last only be a construction given to the words of a statute, and no decision on the construction of a law is as binding as the law itself. On the other side it was argued, that the word *populacy* was ambiguous in the determination of 1670, and there is no way
of

of ascertaining its meaning, but by a subsequent decision, and that such explanatory resolution makes part of the original one; it might by possibility be contrary to it, but the court will not suppose such a case till it happens, and if it is consistent, it would be wrong to doubt the authority it stands upon. Deference ought to be paid to judicial decisions, and the resolution of 1761 has stood ever since, and been maintained by a select committee. The case of Plymouth, in April 1781, was cited, and that to say the statute of 2 Geo. II. was retrospective, was too narrow a construction of the words; for if so, there was no authority in the kingdom, after the act passed, to decide finally a question upon the right of election in any borough, concerning which no decision had been made before. The act was not meant to abridge the jurisdiction of the House in future, but to render it certain and conclusive. A subject left doubtful in a last determination made prior to the statute is, as to that subject, in respect of the power of the House, as if there had been no determination at all, and therefore the House might determine it as a new case. And some observations were made to shew, that the explanation made in 1761 was supported by reason and precedent, to which it was replied, that entering into such consideration at all was an indirect admission,

Determinations explained.

pa. 226.

Determina-
tions ex-
plained.

that the explanatory resolution did not bind *proprio vigore*. The committee, on the day after the conclusion of the arguments, resolved, "that the counsel for the petitioners should not be permitted to give evidence to contradict the resolution of 1761."

In 1792, R. P. Joddrell and J. Sargent, Esqrs. were returned, and Sir G. Webster and J. Tarleton, Esq. petitioned. On the part of the petitioners it was contended, that the last determination of 1670 was conclusive, and established the right of voting in the populacy *only*, *i. e.* in the inhabitants housekeepers paying scot and lot, exclusive of the corporation; and that the resolution of 1761 could not vary the right so established, or repeal or alter the former determination. The counsel for the petitioners rendered evidence to shew, that by the usage in the borough, *prior to the year 1670*, the members of the corporate body, not paying scot and lot, had no right to vote. The counsel for the sitting members objected to this evidence being received. The petitioners counsel insisted, that the evidence was admissible, for its object was to shew that the true construction of the determination in 1670 was not, as contended for on the other side, that freemen had a right to vote, because they could not have so decided with justice, if the facts offered to be proved were true.

true. The committee were of opinion, that the evidence ought to be admitted. The counsel for the petitioners, when he summed up the evidence given, contended that it had been shewn, that the original right of voting could not possibly have been in the corporation, and that those who had the right before any charter was granted must have been the persons voting in 1670, (and cited the case of Saltaſh) consequently the determination made in that year could not be construed to give a right to freemen to vote, without imputing gross injustice and partiality to it. The Committee decided against the right of the freemen.

Determina-
tions ex-
plained.

In 1795, the same question came before a committee of appeal, which reported to the House on the 19th Feb. in that year, a resolution (conformable to the preceding decision) "that the right of election, according
"as the same was decided by the last deter-
"mination in the House of Commons, on the
"10th February, 1670-1, is in the *populacy*, or,
"according to the interpretation of the word
"populacy by the resolution of the said House
"on the 15th Dec. 1761, in the inhabitants
"housekeepers of the said town and port paying
"scot and lot, and in such inhabitants house-
"keepers only."

In

Determina-
tions not ex-
plained.

40. Journ.
p. 876.

22. Journ.
p. 330.

pa. 192.

22. Journ.
p. 409.

21. Journ.
p. 329.

In the following cases (as well as those of Preston in 1785, and Seaford in 1775, just cited) counsel were not allowed to produce evidence in explanation of the terms of a last determination.

Wells, 28th Jan. 1734. One of the complaints in the petition was, that the mayor had admitted persons to vote, who were not qualified to vote, in direct opposition to the express words of the last resolution of the House of Commons. On the 10th Mar. 1734, as we have shewn before, an order of the House for restraining counsel from offering evidence touching the legality of votes, contrary to a last determination, was made; and on the 11th Mar. this cause came on, and after the petition was read, that order made only the day before, probably with a view to this election, was read. The last determination of the House, made on the 18th April 1729, was then read, by which it was resolved, that the right of election "is in the mayor, masters, bur-
" gesses, and freemen of the said city, who are
" admitted to their freedom in any of the seven
" companies within the said city, being thereunto
" entitled by birth, servitude, or marriage." Evidence was offered in order to disqualify some persons who had voted for the sitting members, "up-
" on account of their not being legal burgessees of
" the

"the said city." This was objected to by the counsel for the sitting members, and the counsel for the petitioners proceeded to examine witnesses concerning the usage of the said city, in respect to the admission of burgeses and freemen, and their respective rights. The House however ordered, (144 to 141) "that the counsel for the sitting members be directed to proceed in their objection to the counsel for the petitioners, producing the evidence offered by them to disqualify several persons, who voted for the sitting members, upon account of their not being legal burgeses of the city of Wells." Hereupon counsel on both sides were heard, and then the House resolved, (125 to 112) "that the counsel for the petitioners be restrained from giving evidence; that it is a necessary qualification of a burges of the city of Wells, that such person, previous to his being made a burges, was a freeman of the said city; admitted to his freedom in one of the seven companies within the said city; entitled to such freedom by birth, servitude, or marriage." In the result, 25th Mar. the petitioners were declared duly elected.

Chippenham, 9th April, 1624. This is a borough by prescription, and the members had been elected by the mayor and burgeses at large, until a charter was granted in the 1st year of Q. Mary,

Determinations not explained.

22. Journ.
P. 409.

Ib. p. 431.

1. Journ.
P. 759.
Glanv. p. 49.

Determina-
tions not ex-
plained.

10. Journ.
pa. 568.

10. Journ.
pa. 637.

24. Journ.
pa. 65.

Mary, by which it was contended, that the ancient right of election was altered, and confined to the select body. The House agreed with the report of the committee, and resolved, "that
" the new charter alters not the custom, and *that*
" *the burgesses and freemen, more than twelve, have*
" *voice in the election.*" 1st Dec. 1691. The committee reported, that the right of election, which was not disputed, appeared to be in the occupiers of certain ancient houses, called free houses, or burgage houses, of the names of which persons, both men and women, a register had been used to be kept in the said town. 22d Jan. 1691. The right of election was agreed to be in the possessors of the burgage houses inhabiting within the same.

In the contest for this borough in 1741, memorable not only because carried on with an unusual degree of party spirit on both sides, but because the continuance of a minister in power depended on the event, it was not disputed that the House had a power to give such construction as it thought right to the terms in which a last resolution was couched, and that the words, "burgesses and freemen," might be confined to such burgesses and freemen only as were inhabitants, householders of ancient houses. 28th Jan. 1741. For the petitioners it was insisted, that the words, "burgesses and free-
" men," mentioned in the said last determination
of

of this House, 9th April 1624, mean only such burgesses and freemen as are inhabitants, householders of the ancient houses called free or burgage houses, within the said borough.

Determinations not explained.

For the sitting member it was insisted, that the words, "burgesses and freemen," mentioned in the said last determination, mean persons possessed of ancient burgage houses within the said borough. The House resolved, "that in the last determination of this House, of the right of election of members to serve in parliament for the borough of Chippenham, in the county of Wilts, made the 9th day of April, in the year 1624, which is, *that the new charter alters not the custom, and that the burgesses and freemen, more than twelve, have voices in the election*; the words *burgesses and freemen*, mentioned in the said resolution, mean only such burgesses and freemen as are inhabitants, householders of the ancient houses called free or burgage houses, within the said borough." This resolution was negatived by a majority of one (236 to 235) against the petitioners, the ministerial candidates.

2nd Feb. "The counsel for the petitioners desired to know, what affirmative construction the House would be pleased to make of the words, 'burgesses and freemen,' mentioned in the last determination of this House, concerning the right of electing burgesses to serve in parliament for the said borough, the House

" having

24. Journ.
p. 80.

Determina-
tions not ex-
plained.

“ having determined, that the said words do not
“ mean only such burgeses and freemen as are
“ inhabitants, householders of the ancient houses
“ called free or burgage houses, within the said
“ borough. It was resolved, that the counsel be
“ now called in and directed to proceed accord-
“ ing to the last determination of this House of
“ the right of election of members to serve in
“ parliament for the said borough, made the
“ 9th day of April, 1624, and according to what
“ this House did resolve on Thursday last, con-
“ cerning the last determination,” by 241 to 225.
The petitioners counsel examined some wit-
nesses, but afterwards, on this day, the House was
informed the contest was given up; and the
sitting members were declared duly elected.

2. Dougl.
p. 321.
8. Journ.
p. 255.

27. Journ.
p. 293.

Haslemere, 1775. The last determination of
the right of election in Haslemere was, May
20th, 1661, in these words, “ Resolved, that the
“ inhabitants, freeholders there, have only voice
“ in elections.” This was explained by a reso-
tion of the House, 24th April, 1755, by which it
was resolved, “ that in the last determination of
“ the House, of the right of election of bur-
“ gesses to serve in parliament for the said bo-
“ rough of Haslemere, in the county of Surry,
“ made the 20th day of May, in the year 1661,
“ which is as followeth, viz. that the inhabitant
“ freeholders there, have only voice in election;
“ by the word ‘ freeholders,’ is meant only free-
“ holders

“holders of messuages, lands, or tenements lying
“within the borough and manor of Haslemere,
“whether the same pay rent to the lord of the
“said borough and manor or not, exclusive of
“any lands or tenements which are or have
“been parcel of the waste ground of the said
“borough and manor, or any messuages or
“buildings which are or shall be standing or
“being thereon.” The counsel for the peti-
tioners tendered evidence to shew, that only per-
sons paying, or who from their tenures were
liable to pay a rent to the lord, have a right to
vote. This was objected to, and the committee,
after hearing arguments on both sides, re-
solved, “that the counsel for the petitioners
“should not be admitted to produce evidence,
“tending to shew that only persons paying or
“liable to pay a rent to the lord have a right
“to vote.”

Determina-
tions not ex-
plained.

2. Dougl.
p. 323.

In this case, it was the interest of both the
contending parties to assume, that the expla-
natory resolution of 1755 was conclusive, and
therefore the question, as to the production of
evidence, was argued upon that admission by
mutual consent.

3. Lud.
p. 115.
2. Dougl.
p. 56.

Peterborough, 13th May, 1728; the right of
voting was resolved to be “in the inhabitants
“within the precincts of the minster there, being
“householders not receiving alms, and in other
“the inhabitants within the said city, paying scot
“and

21. Journ.
p. 162.

Determina-
tions not ex-
plained.

g. Dougl.
p. 63.

“and lot.” In 1775, for the petitioner, evidence was offered to shew, that some persons who had voted as inhabitants of the city, without the precincts of the mintster, were not householders, and consequently, as was contended, not entitled to vote by the above last determination; this evidence was objected to, and the question, whether it was necessary that such persons should be householders was argued on both sides. For the petitioner it was insisted, that the qualification of *being householders* extended to both clauses of the sentence, and if it did not, yet that the description of “an inhabitant paying scot and lot” necessarily implied that such an inhabitant must be a householder, and if not, the terms of the resolution might be explained by the usage of the place. On the other side it was said, there could be no usage upon the subject, for there had been only one contested election since the determination; that the words are plain and unequivocal, and the grammatical construction of the sentence will not allow the carrying the words, “being householders,” forward to the second member of the sentence; that being inhabitants paying scot and lot does not imply that they are also householders. After deliberating a considerable time, the committee came to the following resolution: “the committee are of opinion that the word ‘householders,’ in the resolution of the House of Commons of 13th

*

“ May,

" May, 1728, relates to the inhabitants within
" the precincts of the minster *only*, and not to
" other the inhabitants within the said city paying
" scot and lot." The counsel for the petitioners
observed, that by this resolution they were not
expressly restrained from shewing from usage,
that the class of voters described by the words,
" other the inhabitants within the said city paying
" scot and lot must be householders." The
chairman said, " that the committee had not
" mentioned any thing to that purpose in their
" resolution, but that they had fully considered
" the question, and that if desired by the counsel,
" they would come to a special resolution upon
" it." But this was not insisted upon.

Determina-
tions not ex-
plained.

Horsham, 1792. The last determination re-
specting the right of election was on the 16th June,
1715, declaring it to be " in all such persons as
" have an estate of inheritance, or for life, in bur-
" gage houses or burgage lands, lying within the
" said borough." At the election in 1790, the
returning officers had rejected all persons falling
within this description, who had not been pre-
sented by the homage at the court baron, and
admitted by the steward of the borough, before
they came to vote. Before the committee, the
counsel for the petitioners contended, that the
resolution of 1715 was unambiguous, and too
plain to be misunderstood, more especially as by

2. Frazer,
P. 3.

18. Journ.
P. 172.

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Determina-
tions not ex-
plained.

2. Frazer,
p. 13.

a reference to the Journals it appears, that the very question now meant to be agitated was then decided, and therefore that it would be unnecessary for the committee to call for statements of the right of election. The committee deliberated, and acquainted the counsel by their chairman, "that in this state of the case they required, that the counsel for the sitting members should state whether they could raise such a doubt respecting the determination of the House upon the right of election being a last determination, within the meaning of the act of parliament, as will enable the committee to call upon the parties to deliver in statements of the rights of election for which they respectively contend." Upon this the counsel for the sitting members insisted, that the words of the resolution were ambiguous, and contended that no person could have a right to vote as a corporator of this borough, except he had as complete an investiture of that right as would enable him to defend it against a process in *quo warranto*; that they were entitled to give an explanatory construction of the determination by evidence of the constant usage, both before and since that resolution; and if the proceedings in 1715 were to be adverted to, there was no certainty of the decision being on the ground contended for by the other side. The counsel for the petitioners were also heard,

Ib. p. 33.

heard, and at length the committee resolved,
“ that the counsel for the sitting member be not
“ permitted to shew by evidence, that it is ne-
“ cessary that persons having an estate of inhe-
“ ritance, or for life, in burgage houses or bur-
“ gage lands, lying within the borough of Hor-
“ sham, should be presented to or admitted at
“ the lord’s court, in order to be qualified to
“ give their votes at the election of members to
“ serve in parliament for the said borough.”

Determina-
tions not ex-
plained.

The counsel for the sitting members were after-
wards interrupted by the other side in their cross-
examination of a witness, which was conducted
with a view to shew that Horsham was not a
pure burgage tenure, like Downton and Clithero,
where it was understood an unity of tenement
was necessary to be proved, and the doctrine of
occasionality did not apply to conveyances of the
burgages, but resembled more Oakhampton, and
was a burgage tenure borough in the common
sense of every ancient burgage or socage bo-
rough. The committee resolved, “ that it is
“ not competent to the counsel of the sitting
“ members to offer evidence to shew that the
“ right of voting is in *freehold* property, it ap-
“ pearing to the committee to be contrary to
“ the last resolution of the House of Commons,
“ which declares it to be in burgage houses or
“ burgage lands.”

Ib. p. 39.

Of explanatory
resolutions.

It cannot have escaped the notice of the reader, that the decisions upon the admissibility of evidence to explain last determinations have been contradictory, and that there has been a variance of opinion even respecting the same resolutions. For this reason I have thought it my duty to give the decisions themselves, and leave every one to make his own comments.

How far the explanatory resolutions, made since the 2 Geo. II. shall be binding and conclusive as last determinations, is certainly a question of considerable importance, and the observations made upon this subject by Mr. Douglas and Mr. Luders shew of considerable difficulty also. For it may be argued on the one hand, that if they are not conclusive, the right of voting in all those boroughs, concerning which there are resolutions made prior to that act, carelessly or imperfectly drawn up, can never be settled by any jurisdiction now existing, but must remain for ever liable to dispute, and so the object of this part of the statute be defeated; on the other, that the House might, whilst it retained the power, by putting a strained construction on the clear and unambiguous words of any entry, evade or render nugatory all the salutary provisions of the statutes. That there might have been some danger of this happening will not be disputed, and the foregoing cases cannot be perused

rused without regret, that the determinations of the select committees have not been more consistent and uniform.

Of explanatory resolutions.

Mr. Douglas says, "perhaps the utmost weight that ought to be given to a resolution explaining words of a last determination, is that which would be given in Westminster Hall to the decision of a court of law, interpreting doubtful words in an act of parliament. Such explanatory decision, if made on due deliberation, and not incongruous or repugnant, would be held to be binding in subsequent cases." Mr. Luders cites, and anxiously supports this opinion. The practice before the election tribunal has varied, and (without mentioning Haslemere, where from the consent of parties the question did not arise) we may refer to the before cited cases of Plymouth, Preston in 1780, Seaford in 1775 and 1786, and Horsham, in which it was held, that explanatory resolutions should not be contradicted; and those of Dorchester, Pontefract, and Preston in 1784, where evidence was received for that purpose.

3. Doug.
P. 58.

3. Lud.
P. 115.

A doubt therefore may arise, whether the decisions in the cases of Dorchester and Ludgershall in 1791, and Seaford in 1795, by select committees, are final and conclusive on the right of voting by virtue of the 28 Geo. III. c. 52. and to be ranked among last determinations; for

Of explanatory
resolutions.

in these cases the committees were called upon, not to make *original* resolutions on disputed rights of voting, but solely to explain the terms of former decisions, expressly recognised in their own proceedings, as having settled those rights, and as being the foundation of the claims contested before them; for the resolutions of the Dorchester and Ludgerhall committees purport to be made "in pursuance to the last determination of the House of Commons," and of the Seaford committee declares "the right of election according as the same was decided by the last determination in the House of Commons on the 10th of February 1670-1. The same observation applies in another way to the case of Pontefract in 1791, for there the question upon the right of voting necessarily came before that committee, as it had done before others, incumbered with a sort of plea in abatement to its jurisdiction, which depended upon a previous inquiry, whether the entry in the Journals of 1624 was a last determination; and if it was, the select committee exceeded their powers when they took upon themselves to make an original resolution concerning a right, which had been finally decided long before.

C H A P. VII.

OF ELECTORS IN RIGHT OF TENURE, AND HEREIN
OF BURGAGE TENANTS, FREEHOLDERS, LEASE-
HOLDERS, AND COPYHOLDERS.

IN the books of the ancient common law, there are no traces of any peculiar privileges annexed to burgage tenements, concerning their being represented in parliament. Tenure by burgage, says Littleton, "is where an ancient borough is, of which the king is lord, and they that have tenements within the borough hold of the king their tenements; that every tenant for his tenement ought to pay to the king certain rent by year, &c. and such tenure is but tenure in socage." And he further says, "and the same manner is where another lord spiritual or temporal is lord of such a borough," &c. This tenure, which could only exist in boroughs, then, "is but tenure in socage," and as such it was liable, before the 12 Car. II. c. 24. to pay aid unto the king

Of burgage
tenure.

Sect. 162.

Sect. 163.

Cro. El.
p. 120.

13. Rep.
p. 26.

Of burgage
tenure.

Jenk. p. 127.

Ley's Te-
nures, p. 5.

2. Bl. Com.
p. 82.

to make his eldest son a knight; and in the 7 Ed. IV. it was determined, that the king had no right to the guardianship of the infant heir of a burgage tenant, "for tenure in burgage is "common socage, it is a tenure as of a city, "town, or borough." "Socage," says Sir James Ley, "is either *in capite* or common socage; "common socage is either of the king, as of "some honour, castle, or manor, which are spe- "cies of ancient demesne, and burgage of the "king, or socage of common person." "Here "we have an instance," as Mr. Justice Black- stone is naturally led to remark, "where a te- "nure is confessedly in socage, and yet could "not possibly ever have been held by *plough* "service, since the tenants must have been ci- "tizens or burghers, the situation frequently "a walled town, the tenement a single house; "so that none of the owners was probably "master of a plough, or was able to use one if he "had it." The word "socage" is manifestly derived from the Saxon word *soc*, about the sig- nification of which, as applied to the present subject, etymologists have been much divided, I think it would not be difficult to shew, but the discussion would be misplaced here, that the word *soc*, in its genuine signification, always means suit to a court, and socage tenure, te- nure by suit to a court. This suit which was a principal

principal source of revenue to the lord, was, among all the feudal nations, originally connected with military services, and vassals not only ranged themselves under the banners of their chiefs in time of war, but were bound to attend their courts in time of peace; and from this latter circumstance, even military tenants might obtain the denomination. In process of time, persons of this description might commute the obligation to serve in war, in whole or in part, into the payment of an annual sum of money, and this rent, with their attendance on the lord's court, become the principal remaining incidents of their tenure, and even these might afterwards be given up, and nothing left of the tenure but the name.

Of burgage
tenure.

In most, if not in every one of the burgage tenure boroughs, there will be found traces of a court of some description, through which the lord, in feudal times, administered justice to his vassals, and at which all his burgage tenants were bound originally to attend as suitors. The incidents of their tenure, in other respects varied in almost every possible way that the necessities or caprice of mankind could invent: some of them were bound not to change their lord without his permission, others might change their lord whenever they pleased; some owed *socam, saccam, et consuetudinem* to the king, while others in the same town (as
Norwich

Incidents of
burgage te-
nure.

Incidents of
burgage
tenure.

Norwich for instance) owed *socam, saccam, et commendationem* to a subject; some paid forfeitures for crimes or heriots, besides the payment of their rents, others a certain sum for all *consuetudines*, as 10*d.* 5*d.* or 1*d.* annually, for every house; some holding under subjects, paid the *gablum*, or *geldum*, with the *consuetudines*, to the king, &c. In short, their situation seems in no respect to have differed from that of common socmen, and like them they sometimes had persons of base condition under them, to assist in the cultivation of their lands, lying within or without the borough.

The nature of this tenure will be illustrated by a reference to the proceedings respecting some of the boroughs, where the right of voting is confined to it; and from them we may gather, that the paying of a certain rent, reliefs, and fines, on alienation, and doing fealty and suit at the lord's courts, were its *usual* incidents.

Knaresborough, 21 Mar. 1688. The boroughmen unanimously chose one member. The question was between Lord Viscount Latimer, who was chosen by the majority of the ancient and new voters together, and Thomas Fawkes, Esq; who had been chosen by the majority of the ancient voters, who had been sworn in court, and *relieved for their borough houses*, according to the custom of the said borough. The death of Lord
Latimer

Latimer seems to have prevented the committee from coming to a regular decision, but they resolved Mr. Fawkes to be duly elected, and the House agreed.

Incidents of
burgage
tenure.

In the Downton case in 1775, there being no determination of the House of Commons on the right of election, the counsel for the sitting members would not admit any general rule as to the right of voting. But both sides, in their arguments, considered it to be "in persons having
" a freehold interest in burgage tenements
" holden by a certain rent, *fealty, and suit of court,*
" *of the Bishop of Winchester, who is lord of the*
" *borough, and paying reliefs on descent, and fines*
" *on alienation.*"

1. Dougl. p.
208.

At Saltash, where, without any express charter of incorporation, the town was under the government of a mayor, the juries at the law courts (as was usual in many parts of the kingdom) were accustomed to make by-laws. One by-law, made "at a law court holden the Monday next
" after Saint Faythes day, to wit the Xth day
" of October & in the 17th yeere of the reign
" of" Queen Elizabeth (1575) shews the situation of the burgage tenants very strongly. "Also
" yt ys inacted that no *p̄son* or *p̄sons* shall enjoy
" any of the libties of the towne, except he have
" lande or tēem^t. wth. in this towne in fee to
" him & hys heyers for ev^r. And that they and
" eyre

2 Lud.
P. 123.

Ib. p. 125.

Incidents of
burgage
tenure.

“ evre of them beare yerely off heigh rent to this
“ towne 3^d. at the least, & also to paye unto the
“ towne all such customes swytes, & servise as
“ to the same app’teyneth And alwayes to paye
“ toward the newe making of the passage bote as
“ of old time hath bin accustomed to be paid
“ or ells not to be passage free, & to pay for a re-
“ lief o. 2. 6. whethr. yt be a wholle burgage or
“ half a burgage; & to serve at three lawe courts
“ there by the yere, & to doe his fealty at the next
“ court next after he is fownde tennte & to pay
“ for his fealty o VIII^d. whereoff to the stew-
“ ard III^d. and to the comon box III^d.”

It must be admitted, that the payment of a certain annual rent, or the performance of those services which have been the usual incidents of this tenure from time immemorial, are circumstances to prove its modern existence. Thus in the following case, the payment of ancient burgage rents was deemed material to establish the right of boroughs, which had long discontinued, to be restored to the privilege of sending representatives to parliament.

1. Journ.
p. 891.

Milborne Port, and Weobly, 1 May, 1628. It appears by Mr. Hackwill’s report from the committee for elections, that these boroughs had sent members to parliament in the 26th and 28th years of Edward the 1st, but there was no evidence of their having sent any since. The committee were
of

of opinion, that every ancient borough ought to send burgesses by the writ, giving as a reason also, that an ancient borough is to pay tenths, not fifteenths. That these were ancient boroughs, which was inferred from the bounds of these towns being "like of ancient boroughs," and from their paying burgage rents. That they ought to send burgesses, and that the long discontinuance was no loss of it; for this was "no franchise" which may be lost, but a service *pro bono publico*. Upon question upon each borough separately, it was resolved by the House, that it "was an ancient borough, and sent burgesses to the parliament, and ought now to be restored to that right of sending burgesses to parliament," and warrants ordered to issue under the speaker's hand, for writs to be made out accordingly.

Incidents of
burgage
tenure.

But the payment of rent, or the performance of any particular duty or service, was not anciently a necessary incident to, or a distinguishing characteristic of burgage tenure. For in Domesday book are many instances of burgage tenants, who owed no services, and paid no rents to any lord. Thus in Huntingdon, *de his habebat Sanctus Benedictus de Ramesey XXII. burgenses T. R. E. Duo ex his fuere quieti ab omnibus consuetudinibus & XXX. reddidere quisque X. denar. per annum.* In Hertford several houses are mentioned, *que nullam*

Domesd.
p. 203.

Ib. p. 132.

Incidents of
burgage
tenure.

Doomsd.

p. 238.

vide post p.

Rent and ser-
vice lost.

2. Lud.

p. 176. 197.

2. Frazer.

p. 82.

Ib. p. 119.

Right of vot-
ing annexed.

nullam consuetudinem reddiderunt nisi geldum regis quando colligebatur. And in Warwick were burgesses, who had all the feudal rights of lords over their own tenements.

If then neither rent nor services were of the essence of this tenure, it might be justly argued in the Saltash case, in 1785, that if the freeholders of burgage tenements there had ever enjoyed the right of electing members, it could never be lost; the destruction or loss of the rents and services, whether by non-claim, or release of the lord, could not destroy the effect of the tenure, or the right of the tenants. The right, it was said, could neither be lost by alienation nor renunciation of the tenant, nor length of time.

In the Horsham case, 1792, the irregularity of the rent was received as one circumstance to disprove the identity of the tenement for which the vote was claimed; and in the cases of Philip Humphreys, because the boundaries could not be traced, and the same ancient rent had not been uniformly paid, the vote was only slightly insisted on; but in the case of William Hardes, where the rent had varied, but the identity of the premises was satisfactorily proved by the boundaries, the vote was held good.

Lord Chief Justice Holt, giving judgment in the great case of Ashby and White, stated that
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the right of voting for burgage tenements existed, whether a town was incorporated or not, *as belonging to the land*, while all other rights, whether by prescription or charter, were only personal; the right of the inheritance of that right being given to the corporation, and the personal exercise of it only given to the voter. This observation on the nature of this right does not go the length of asserting, that it is attached to any particular indivisible portion of land; and in any other sense it may be applied with equal truth to the general right of freeholders to vote for counties. In both cases it is the land to which the vote belongs, and in truth (on the genuine principles of the ancient constitution of England) it is the land, not the owner or occupier, which is represented. This judgment has been so often cited, and, it may be added, so often misconstrued, that I give, in the words of the reporter of highest authority, that part which is more immediately connected with the present subject.

“ The elections of knights,” said Lord Holt,
“ belongs to the freeholders of the counties, and
“ it is an original right vested in and inseparable
“ from the freehold, and can no more be severed
“ from their freehold, than the freehold itself can
“ be taken away. Before the statute of the 8
“ Hen. VI. c. 7. any man that had a freehold,
“ though never so small, had a right of voting,
“ but

Right of vot-
ing annexed.

2. Ld Raym.
p. 950.
See too
6. Mod. Rep.
p. 51.

Right of vot-
ing annexed.

“ but by that statute the right of election is con-
 “ fined to such persons as have lands or tene-
 “ ments to the yearly value of forty shillings at
 “ least; because, as the statute says, of the tu-
 “ mulds and disorders which happened at elec-
 “ tions, by the excessive and outrageous number
 “ of electors; but still the right of election is as an
 “ original right incident to, and inseparable from
 “ the freehold. As for citizens and burgessees, they
 “ depend on the same right as the knights of shires,
 “ and differ only as to the tenure, but the right
 “ and manner of their election is on the same
 “ foundation; now boroughs are of two sorts,
 “ first, where the electors give their voices by
 “ reason of their burghership, or, secondly, by
 “ reason of their being members of the corpo-
 “ ration. Littleton, in his chapter of tenure in
 “ burgage, 162. C. L. 108. b. 109. says, *tenure in*
 “ *burgage is where an ancient borough is, of the*
 “ *which the king is lord, of whom the tenants hold*
 “ *by certain rent, and it is but a tenure in socage.*
 “ And sect. 164, he says, *and it is to wit, that the*
 “ *ancient towns called boroughs be the most ancient*
 “ *towns that be within England, and are called bo-*
 “ *roughs, because of them came burgessees to parlia-*
 “ *ment.* So that the tenure of burgage is from
 “ the antiquity, and their tenure in socage is the
 “ reason of their estate, and *the right of election is*
 “ *annexed to their estate.* So that it is part of the

“ constitution of England, that these boroughs
 “ shall elect members to serve in parliament,
 “ whether they be boroughs corporate or not
 “ corporate, and in that case the right of election is
 “ a privilege annexed to the burgage land, and is,
 “ as I may properly call it, a real privilege. But
 “ the second sort is, where a corporation is cre-
 “ ated by charter, or by prescription, and the
 “ members of the corporation, as such, chuse
 “ burgesses to serve in parliament. The first sort
 “ have a right of chusing burgesses as a real right,
 “ but here, in this last case, it is a personal right,
 “ and not a real one, and is exercised in such
 “ manner as the charter or custom prescribes,
 “ and the inheritance of this right, or the right of
 “ election itself, is in the whole body politic, but
 “ the exercise and enjoyment of this right is in
 “ the particular members.”

Right of vot-
ing annexed.

Here Lord Holt asserts, there is a right of voting annexed to the soil as a *real* privilege, not of every burgage tenement, but of such as happen to be situated within certain boroughs, sending members to serve in parliament. His words must be understood in this restrained sense; for if the right of voting was an indispensable incident of the tenure, and annexed to the soil of every burgage, the consequence must be, that no tenement could be now left unrepresented.

But there are many towns, sending no repre-

U

sentatives

Right of vot-
ing annexed.

sentatives to parliament, in which burgages have existed from time immemorial, and boroughs represented in parliament, in which are burgage tenements (*a*), whose owners or occupiers have not, as such, the privilege of voting. It is probable that no distinction was alluded to between tenants in burgage and other tenants, but between tenants of every description, and persons claiming to vote by virtue of corporate franchises. The case under consideration led only to the discussion of the rights of voters for boroughs, and Lord Holt contrasts the burgage tenure right only with that derived from corporations, as if anxious to shew it was not derived from any corporate franchise. His opinion, however, may be cited in proof of the antiquity of this species of tenure, and in favour of my conjecture, that its privilege was the parent stock of most, if not all, of the rights now existing. He was led into this train of reasoning by the discussion of the plaintiff's claim, founded on his being a *householder* only, within the borough of Aylesbury, and his arguments would have been wholly irrelevant, unless he had conceived that the right of voting, except where there is a charter to support it, must be deduced from tenure.

The right of voting has been so currently con-

(*a*) As at Abingdon, Aldborough, Liverpool, London, Steyning, Cambridge, Carlisle, and other places.

sidered

sidered as annexed to a burgage tenement, that it has been enumerated among its appurtenances in a conveyance. In the year 1740, William Waterton conveyed premises in Horsham to Lord Viscount Irwin by the following description; "all that *part* of a messuage or tenement, "garden and backside, *together with the vote and "other privileges and appurtenances to the same be- "longing*, being burgage tenure, commonly call- "ed," &c.

Right of vot-
ing annexed.

2. Frazer,
p. 85.

It is hardly necessary to observe, that the right of voting is not confined to burgage *houses*, but that the tenements which give the privilege frequently consist wholly or in part of *lands*. Reference may be made (among others) to Ashburton, Clithero, Newton, Petersfield, Whitchurch, and Old Sarum, where it is asserted there is not a single house now standing.

Not confined
to houses.

This striking peculiarity in the law of parliament, by which the right of voting is supposed to be annexed to a particular tenement, has induced me to distinguish burgage tenants from ordinary freeholders and leaseholders, who differ from each other only in the interest they have in their respective estates, and reserve them for distinct consideration; and for the same reason I have been induced to arrange Weobly, Bramber, and Petersfield, where the right of voting is confined to

Arrangement
of boroughs.

Arrangement
of boroughs.

10. Journ.
P. 550.

12. Journ.
P. 404.

22. Journ.
P. 769.

freeholders, or inhabitants of particular estates, among the acknowledged burgage tenure boroughs.

Weobly, 12 Nov. 1691. There was a double return, one made by the constable and several other *burgesses*, another by several other *burgesses*.

Weobly, 13 Jan. 1698. The right of election was agreed to be in the inhabitants of houses of 20s. per ann. rent, and also paying scot and lot.

Weobly, 3d Mar. 1736. For the petitioner it was alledged, that Weobly was an ancient borough by prescription; that the two constables were the returning officers; and that the right of election was in the inhabitants of the ancient vote-houses of 20s. per annum value, or more, residing in the borough forty days before the election, and paying scot and lot, and also in the owners of ancient vote-houses not inhabited, such owners paying scot and lot.

It was insisted on the other side, that the right of election was in the inhabitants of houses of 20s. per annum value, or more, paying scot and lot.

Evidence was produced by the petitioner, but none on the other side, and the committee resolved, and the House agreed, "that the right of election was in the inhabitants of the ancient vote-houses of 20s. per annum value, and upwards, *residing in the said houses forty days before the day of election*, and paying scot and lot, and also

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“ also in the owners of such ancient vote-houses, paying scot and lot, who should be *resident in such houses at the time of the election.*” In this case evidence was received, that in this borough residence only the night before the election was sufficient to give a vote.

Arrangement
of boroughs.

Bramber, 18th June, 1703. The right was agreed to be in the persons inhabiting in ancient houses, or in houses built on ancient foundations, paying scot and lot; and the election being declared void, and a petition presented against the second election, the right was again agreed, 10th Mar. 1703, to be as before stated; and again, 1st June, 1715, agreed; and that this is a borough by prescription.

14. Journ. p.
286.

Ib. pa. 373.

18. Journ. p.
155.

Petersfield, 9th May, 1727. The petitioner alledged, that this is a borough by prescription, and that the right of election is in such only as have freeholds within the borough, in lands, or in ancient dwelling-houses, or shambles, or dwelling-houses built upon ancient foundations. On the other side the right was alledged to be in the freeholders in general, without any distinction of ancient houses, or houses built upon ancient foundations. The committee resolved the right to be in the freeholders of lands, or ancient dwelling-houses, or shambles, or dwelling-houses or shambles built upon ancient foundations, within the borough, and the House

20. Journ.
p. 859.

Arrangement
of boroughs.

agreed. One point in dispute was, whether persons had a right to vote for quit rents. Twenty-three of the sitting members votes were objected to as split votes since 1695, four of them voting under conveyances dated in the September, October, November, and December preceding. The petitioner objected to one hundred and eleven of the petitioners votes, ninety-four as split for this election, which came on 27th Jan. 1726, and eleven of them had voted under conveyances made in September, October, November, and December, and no less than sixty-five under conveyances made in January. The petitioners counsel insisted, in support of these votes, that all conveyance of freehold at any time before the election, gave good votes. The committee resolved, that the sitting member was duly elected, but the House disagreed, and resolved the petitioner was duly elected, thereby deciding in effect, as far as can be gathered from the report of the evidence, contrary to the opinion of the committee, that conveyances of freehold, made at any time before the election, entitled to vote.

Number of
burgage
tenure bo-
roughs.
1. Dougl.
p. 224.

It was said in the Downton case in 1775, that "there are about twenty-nine burgage tenure boroughs in England." Since that time, some changes have taken place, particularly Saltaish has been restored to its place among the burgage tenure

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tenure boroughs, and it may be asserted that Pontefract has been taken from them; but whether the late decisions have the effect of a last determination may be hereafter disputed. Both sides, however, acquiescing under them, for the present, it is omitted in the ensuing list. The following list of cities and boroughs, in which burgage tenants are supposed to have either an exclusive or concurrent right to vote, has not been made without much trouble; but I dare not presume that it is perfectly accurate in all respects; and in particular it must be remembered, that where there has been no last determination to bind the right, it may in some cases be still fluctuating.

Number
of burgage
tenure bo-
roughs.

<i>Appleby.</i>	(a)	-	
Ashburton,	-	-	26th Feb. 1707.
			17th Mar. 1710.
Beeralston,	-	-	6th June, 1721.
Bletchingley,	-	-	22d Mar. 1623.
Boroughbridge.	(b)		
Bramber.	-	-	

(a) Where the names are printed in Italics, there are no last resolutions, but only the agreements of candidates.

(b) Willis says, the right here is in the burgage holders. Not. Parl. vol. 3. p. 68.

Number
of burgage
tenure bo-
roughs.

	Castle Rising. (a)	
	Clithero, -	4th Feb. 1661.
	Cockermouth. (b)	
10.	Downton.	
	East Grinstead, -	9th Jan. 1695.
	Great Bedwin, -	22d Dec. 1707.
	Heytesbury. (c)	
	Horsham, -	16th June, 1715.
	Knareborough.	
	Litchfield, -	10th Dec. 1718.
	Midhurst. (d)	
	Newton, Lanc. (e)	
	Newtown, Hants, -	22d April, 1729.
20.	North Allerton, (f)	
	Old Sarum, -	14th Mar. 1688.

(a) Willis says, "the members are chosen by the free burghesses, in number about fifty, divers of which live at a distance, there being only thirty-two houses remaining in the town." Not. Parl. vol. 3. p. 36; but in the addenda at p. 305, he says "right in the burgage holders."

(b) Willis says, the electors are the inhabitants paying scot and lot, Not. Parl. vol. 3. p. 12. but from the entries on the Journals of 14th Mar. 1701, and 18th Jan. 1717, it appears that the burgage holders are the electors.

(c) According to Willis, the right is in the principal inhabitants or *burghesses*. Not. Parl. vol. 3. p. 60. but in the addenda, in the burgage holders, p. 307.

(d) In the burgage holders. Not Parl. vol. 3. p. 56.

(e) In the *free burghesses*. It is no corporation. Ib. p. 30.

(f) In the burgage holders. Ib. p. 70.

Petersfield,

Petersfield, - - 9th May, 1727.

Richmond, - - 9th Mar. 1727.

Rippon. (g)

Saltash, (b)

Thirsk. (i)

Weobly, - - 3d Mar. 1736.

Westbury, - - 1st June, 1715.

Number
of burgage
tenure bo-
roughs.

There are traces of burgage rights having existed at Callington and Malton, and perhaps at Chippenham and some other places, but the modern usage has been generally adverse. With respect to the two former places, the right of voting has not been settled by any last determinations, and how far that for Chippenham has been settled has admitted of dispute.

In the first Downton case reported by Mr. Douglas, the counsel for the petitioners defined a burgage to be "one undivided and indivisible

Burgage
indivisible.
1. Dougl.
p. 217.

(g) Willis says, the inhabitants are the electors. *Ib.* p. 67. But in the addenda he says, the freehold burgage holders, p. 308.

(b) The fate of Saltash has been somewhat singular; the right has been under the discussion of select committees no less than five several times. The three first decisions were against the right of the burgage tenants; the two last in their favour, and so it was finally determined in 1792.

(i) In the burgage holders, Willis, *Not. Parl.* p. 69.

"tenement

Burgage
indivisible.

"tenement clearly described, neither created
"nor capable of being created within time of
"memory, which has immemorially given a
"right of voting;" and this definition was not
objected to by the counsel on the other side.
But when the right of voting in that borough
was disputed for the second time, a more accurate
definition was given in the following terms: "an
"entire indivisible tenement holden of the su-
"perior lord of a borough by an immemorial
"certain rent distinctly reserved, to which the
"right of voting is incident." But even this
amended definition is deficient in precision, for it
appears that in the borough of Downton, there
are divisions of entire burgages into halves and
quarters, and their tenants are by the custom of
the place allowed to vote as well as the tenants
of whole ones. These half and quarter bur-
gages are not so denominated, because they con-
tain such proportions of entire burgages, but
because they pay such proportions of their ancient
annual rents. In Clithero also are half burgages,
each paying one moiety of the rent of an entire
burgage; and so in other places. Thus in Down-
ton, the rent of a whole burgage is 1 s. of a half,
6 d. of a quarter 3 d. In Clithero there are rents
of 1 s. and 4 d. 8 d. and 4 d.; in Pontefract of
1 s. and 6 d.; and in Westbury 4 d. 2 d. and 1 d.
But in some instances, even in these boroughs
the

the rents are so irregular as not to admit of being classed under these denominations: for instance, at Downton is the five-twelfth of a burgage, paying 7*d.* and the third paying 4*d.*; one division, it was shewn, paid 7½*d.* and some were so small as to pay only 1½*d.* each. At Clithero are burgage tenements paying 6*d.* and at Pontefract, 8*d.*; at Steyning, in the 33d of Hen. VIII. there existed entire burgages, for which the rents varied in almost regular gradation from 2*d.* up to 23*d.* and 1*d.* was paid for a parcel of a burgage, as was also 9*d.* and 4*d.* for three parcels of burgages. At Horsham, 1792, tenants of *portions* of burgages paying 4*d.* and 2*d.* (where an entire burgage pays a shilling) were decided to have good votes. Thus the vote of William Troward was decided to be good, though, in an ancient survey of the borough, made in 1611, and received in evidence by the committee, it appeared that the tenement for which he voted, was “a *portion* of a burgage,” paying an annual rent of 4*d.* only, the rent for an entire burgage being 1*s.* because it was also proved, that former tenants had signed returns in the years 1678, 1679, 1680, 1710, 1734, 1735, and 1736. At Beeralston, the right of burgage tenants paying 3*d.* *per annum*, or *more*, and at Weobly, of owners of ancient vote-houses of 20*s.* *per annum*, and upwards, has been established by last decisions of the House.

Burgage
indivisible.

2 Frazer,
P. 434.

2 Frazer,
p. 80.

When

Burgage
indivisible.

When these divisions of burgages were made cannot now be traced, but according to the modern decisions, it is necessary, in order to account for some of them as well as entire burgages carrying votes, to suppose that they were so granted out originally by their lords.

It is clear, therefore, that by an *entire* tenement, in the above definition, is not meant a whole burgage, but that the tenement, to which (whatever its denomination or proportion of an entire burgage may have been) the right of voting was annexed before the time of memory, must be whole and undivided in the hands of the tenant who presents himself as a voter at the poll.

The word *indivisible* also must be understood with some restriction, for it has never been contended, that a burgage tenement may not be divided, and the portions conveyed to separate purchasers. The beneficial law, passed in the 18th year of Edward the 1st, known by the name of the statute of *quia emptores*, which expressly provides, *quod de cetero liceat unicuique libero homini terram suam, seu tenementum, seu partem inde pro voluntate sua vendere*, and that the feoffee shall hold immediately of the lord of the fee, by the same services as the feoffor formerly held, is understood to extend to this tenure; so that the tenement is divisible exactly as if it had been a common freehold; but according to the decisions in the Downton and other cases, after such division,

sion, the right of voting before annexed to the soil of the whole, does not follow each of the separate parts. In this sense alone, as connected with the vote, the tenement can be said to be indivisible, and the definition would have been more accurate if it had been so expressed.

Burgage
indivisible.

Doubts, perhaps, might be entertained on the other parts of the definition, and particularly, it seems, that the distinct reservation of an immemorial rent can hardly be requisite, when so many instances may be produced out of Doomsday-book, in which the tenure has existed without the reservation of any rent at all.

By the statute of *quia emptores*, the purchaser of any part of a burgage tenement, holds immediately of the lord of the fee, and it might be presumed, that like the *bonâ fide* purchaser of any portion of other freehold land, (putting the value out of question) he would be entitled to vote for such tenement in his proper district. In the common law, no prohibition to exercising this privilege is found, (a) but by the law of parliament it has been supposed, that portions of a burgage tenement entitling to vote, if split within time of memory, do not transmit that right to their holders.

Great Bedwin, 22d Dec. 1707. The objections were, that the voters were not inhabitants, or freeholders, or certificate men, or that their

15. Journ.
p. 480.

(a) See the case of Onslow v. Rapley, post.

Burgage
indivisible.

8. Journ.
P. 387.

2. Frazer,
P. 39. 47.

16. Journ.
P. 12.

2. Frazer,
P. 40.
ante, p. 251.

houses were split burgages, or erected on new foundations.

Clithero, 4th February, 1661. The House resolved, that according to the judgment of the last assembly, such freeholders only as had estates for life, or in fee, had the right of election; and the select committee, in 1781, decided, upon a reference to the judgment here alluded to, that the right of voting was confined to freeholders of single indivisible tenements; and that an unity of tenement was necessary to be proved; and that the doctrine of occasionality did not apply to the conveyances of the burgages.

East Grinstead, 24th Nov. 1708. The petition complains of "admitting double voices for "one and the same burgage-hold."

Horsham, 1792. After the sitting members had been restrained, by a resolution of the committee, from shewing that the right of voting was in freehold property, their counsel argued, that by the common law, all the tenants of parts of split burgages have a right to vote, and the idea of the right being confined to distinct entire burgages was only recently introduced into the law of parliament, as declared in Downton and Clithero, and a few other boroughs, and therefore the petitioners ought to prove, that the burgage tenure, mentioned in the last resolution, was that in the parliamentary sense, and not that according
to

to the common law ; but that the former was only a rule attaching on particular instances, and not a general principle laid down by parliament; and that in the Downton cases the law was argued as peculiarly applicable to that borough ; and the case of Westbury, 1st June, 1715, was cited to prove, that the modern idea of the tenure was not entertained by the House at that period. They also offered to prove, that in this borough the right of voting followed the transfer of the land, when divided into portions of burgages. For the petitioners it was insisted, that by frequent and solemn discussions, the law had been settled with regard to burgage tenure boroughs; that the case of Downton had been decided on the general law, and not the particular usage of the place ; and the case of Clithero was also cited to shew, that the right of voting is by the law of parliament confined to a single indivisible tenement. The committee resolved, “ that the counsel for the sitting members be not permitted to offer evidence of any local usage in the borough of Horsham, of splitting and dividing ancient burgages.”

And in conformity to this resolution, the committee uniformly decided against all the votes which had been tendered or received at the election, by tenants of *parts of burgages*, split since the time of memory. The reader will find the cases detailed

Burgage
indivisible.

Burgage
indivisible.

2. Frazer,
p. 89.

detailed in Mr. Frazer's second volume of Reports.

The minute attention which the committee bestowed on this part of the case before them, may be seen in the investigation of the case of John Ireland, to whose burgage it appeared that "a certain narrow way, being a wainway," had formerly belonged. Several deeds were read to prove the identity of the burgage, and the counsel for the sitting member, who was attempting to impeach the vote, was stopped in his summing up by the committee observing, that besides a variance in the quantity of land, the wainway, which was part of the ancient burgage, was not included in the conveyance to the voter; and in the reply the vote was but faintly insisted on.

Copyholders
by burgage.

In the definitions of burgage tenure, it is said to be *socage*, or *common socage*. Socage might be either *free* or *villein*, and persons holding in *villein socage*, as tenants in ancient demesne for example, undoubtedly voted at some elections, and even in all probability had the exclusive right of returning members in some places. So with regard to burgage tenure, we trace not only a variation in the rents and services paid or performed by different tenants in the same borough, but a distinction in the tenure itself, probably analogous to that just mentioned as prevailing in tenure in socage. Thus in Norwich, one of the burgesses

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erat ita dominicus regis ut non posset recedere nec homagium facere sine licentia ipsius. And Herold had another equally dependent upon him. Thetford. In Burgo autem erant DCCCCXLIII burgenses tempore regis Edwardi, de his habet rex omnem consuetudinem. De istis hominibus erant XXXVI. ita dominici regis Edwardi, ut non possent esse homines cujuslibet, sine licentia regis; alii omnes poterant esse homines cujuslibet, sed semper tamen consuetudo regis remanebat præter berigete. Modo sunt DCCXX. burgenses & CCXXIII. mansuræ vacuæ. De istis burgensibus XXI. habent VI. carucatas, & LX. acr. quas tenent de rege & erant in foca Sancti Edmundi.

Copyholders
by burgage.

Litt. Doomf.
p. 116. a.
Litt. Doomf.
p. 119.

In burgo de Warwic habet rex in dominio suo CXIII. domus et barones regis habent CXII. de quibus omnibus rex habent geltum suum. Then, after mentioning the property of others, Præter has supradictas masuras sunt in ipso burgo XIX. burgenses qui habent XIX. mansuras cum saca & foca & omnibus consuetudinibus & ita habebant T. R. E.

Doomfd.
p. 238.

From these extracts it appears, that there were three sorts of burgage tenants, viz. those who held in *dominio*, the common burgesses, and those who enjoyed all the feudal seignioral rights over their own tenements. The first class consisted probably of persons answering to the description of villein socmen, or tenants in ancient demesne, (or perhaps, were originally such) and like them might be entitled to vote in their respective

Copyholders
by burgage.

districts. But it is very difficult to suppose, that mere villeins were ever possessed of that franchise, or to support upon principle the claims of copyholders (if we are to assume, with great legal authorities, that they are the successors of villeins) to the enjoyment of it by virtue of their tenure. In the boroughs of Cricklade and Westbury, their right has been recognized.

10. Journ.
p. 72.

Cricklade, 1st April, 1689. It was agreed by the counsel on both sides, that the right of election was "in the freeholders and *copyholders of the borough houses*, and leaseholders for any term "not under three years." But for the sitting member it was alledged, that they ought to be possessed of their estate in their own right, and not in right of their wives. And in 1776, a select committee resolved the right to be "in the "inhabitants possessing houses within the said "borough, who are freeholders, copyholders, or "leaseholders for any term," &c.

4. Dougl.
p. 66.

14. Journ.
p. 62.

Westbury, 1st Dec. 1702. It was insisted by the petitioner, that the right was in the owners of burgage houses, either freeholders, or such as hold immediately of the lord for lives, or by lease for years, and reside in the borough. The sitting member agreed, except that he denied that leaseholders for years had any right to vote, unless their leases were determinable upon lives; and they further agreed, that *burgage houses were*

known by paying a burgage rent. It was proved, that freehold, and some copyhold leases, if they paid a burgage rent, had a right to vote. The committee resolved, that tenants of burgage houses, by lease for years absolute, had a right to vote; and the House agreed.

Copyholders
by burgage.

Westbury, 1st June, 1715. It was agreed, that Westbury is a borough by prescription, and that only burgage-tenants have a right to vote. The petitioners counsel insisted, they must be such tenants only as hold in fee for life, or ninety-nine years determinable on lives, or by copy of court-roll, and pay an annual rent of four pence, or two pence, to the lord, from which rent they are called whole or half burgages. The sitting members counsel insisted, that tenants for terms absolute, and quarter burgages, viz. such as pay a penny rent to the lord, have also a right to vote. The committee determined, and the House agreed, that the right was in every tenant of any burgage tenement in fee, for life, or ninety-nine years determinable on lives, or by copy of court-roll, paying a burgage rent of 4*d.* or 2*d.* yearly, being resident within the borough, and not receiving alms.

18. Journ.
P. 149.

Ib. pa. 154.

Some of my readers may perhaps be inclined to suspect, that the copyholders here alluded to must be in truth tenants in ancient demesne, or some sort of customary freeholders; but that may be

Copyholders
by burgage.

18. Journ.

P. 152.

Ib. p. 150.

Burgages
held of other
manors.

Doomsd.

P. 3.

Ib. p. 65.

Ib. p. 4.

Ib. p. 238.

doubted; for in this latter contest one claimed by a lease for ninety-nine years determinable on the life of the lessor, who was a *copyholder for life*, and it was insisted, that this was not a good title, for such copyholder could not grant such a lease. The vote of another was impeached for want of a surrender.

Littleton, in his description of this tenure, confines it to tenements within a borough, *held of the lord*, but numerous entries in Doomsday book induce a suspicion, that he either meant only to put an example by way of illustration, or that he was mistaken; for in most of the principal boroughs are found tenements of burgesses, held of other lords beside the lord of the borough. And it was no uncommon thing for the burgage tenants to belong to distant manors; and we may presume, that their tenements were considered as part of them. Thus, under the manor of Tarent, in the county of Kent, belonging to the Archbishop of Canterbury, is this entry, *ad hoc manerio V. burgenses in Rovecesterio reddunt VI. sol. & VIII. den.* In Wiltshire, *rex tenet Alderborne—Huic manerio pertinent VI. burgenses in Crickelade reddentes LXIII. den.* So twenty-five burgesses in Romney belonged to the manor of Alderston. In the borough of Warwick, after mentioning a number of *masuræ* belonging to great men, are these words, *hæ masuræ pertinent*
ad

ad terras quas ipsi barones tenent extra burgum & ibi appreciatæ sunt.

Burgages
held of other
manors.

Whether the tenements locally situated within a borough, but belonging to another district, and rendering their feudal services and profits to distant lords, privileged their holders to vote at the elections of members with the other burgesses may be questioned. In the last Horsham case, the committee decided that a tenement, probably of this nature, did not give a vote. John Smith voted for a burgage described in his conveyance as "a piece or parcel of meadow ground lying," &c. "containing by estimation four acres, more or less, being one burgage," &c. It was proved that freeholds of the manor of Roughey are interspersed among the burgages of the borough of Horsham, and that this ground, though locally situated within the borough, was in truth held of that manor, and the vote was admitted to be bad. But tenants of lands within, but not part of the borough, paying burgage rents, and doing suit and service, and serving offices at Ashburton, are entitled to vote.

2. Fraser.
P. 110.

p. 293. post.

This privilege of voting annexed to a burgage tenement, it is generally understood cannot be severed or lost by dividing the estate; split it into a thousand parts, the original tenement, and its right to be represented, still subsists. From some

Right cannot
be lost.

Right cannot
be lost.

13. Journ.
P. 795.

25. Journ.
P. 571.

cases, it might be presumed that the exercise of this right cannot be suspended, but that the tenant of some one of those divisions will be entitled to vote.

Thus Cockermouth, 14th March, 1701. James Stanhope, Esq. petitioner, against Thomas Lamplugh, Esq. states, that "the right of election is in such only as hold by burgage tenure; and if such burgage estate be split or divided, yet *there is only one vote for such estate,*" and complains that several were polled, who claimed by divided estates.

So Westbury, 16th March, 1747. Ten were objected to as having received charity, and with regard to one of them, Samuel Bigwood, it was proved, that the house for which he voted was part of the house for which one Christopher Read had likewise given his vote; that the two parts were always reputed to be one tenement, and to give a right only to one vote, *which vote was usually given for that part which Read occupies.* It was also proved, "that a burgage tenement, which pays a rent of *four* pence, is called a whole burgage, and *two* pence, a half burgage; that a half burgage has no right to vote, but cannot be divided, nor did the witness, ever hear that one whole burgage paying *four* pence, could be divided into two; that it is generally reputed, that this tenement pays only a rent of *2d.* which *2d.* is paid for that part for
" which

“ which Read voted.” The testimony relating to the burgages in Westbury in general does not seem to have been controverted, but there was much contradictory evidence respecting Bigwood’s vote, and the opinion of the committee upon its validity does not appear.

Right cannot
be lost.

Great Bedwin, 8th December, 1747. The petitioners examined several witnesses to disqualify five persons who had voted for the sitting members in right of split houses, for which other persons had voted before, and to prove, “ that by the usage of the said borough, one vote “ only is allowed for every such split house; and “ that it is in the election of the returning officer to admit which occupier of every such “ house he thinks fit, to give that vote; and “ also to disqualify some of the said persons “ who so voted in right of such split houses, as “ not being inhabitants within the said borough;” and this evidence was contradicted by the other side.

25. Journ.
p. 462.

Ib. pa. 464.

From these cases it may be inferred, that the number of voters was understood to be confined, by the law of parliament, to the number of ancient burgage tenements, long before the Downton case, which seems to have been taken by the counsel on both sides, in the case of Horsham, for the æra of its introduction.

Right
revived.

Of late, however, (and the case of Horsham, 1792, may be referred to as the most recent instance) it has been admitted, that whenever an ancient burgage, giving the right of voting, is split, that right is, though not wholly lost, yet suspended, and in abeyance, and cannot be exercised by any of the tenants of its divisions; and indeed, where there is no custom to regulate, it seems very difficult to determine to whom the preference shall be given.

But in one case, where all the parts of the split burgage were afterwards re-united in one person, the right of voting was held to be revived. H. Barnes voted for a tenement, which, at the election in 1774, was held by two brothers, John and George Russell. They had attempted to vote for it as two burgages, but their votes were objected to. Barnes's vote was at first objected to, because no title appeared from the Russells to him; but the conveyances being produced, it appeared that the part held by George Russell was described as *a burgage*, and the part held by John Russell was described to be *part of* an ancient burgage. The voter was then objected to, because on the face of the deeds he had a conveyance of *a part* only of a burgage, but it was proved to be an ancient burgage, and that the whole of it was conveyed to the voter. The objections to this vote were afterwards given up.

At

1. Lud.
p. 230.

At Clithero exists a singular right of voting, for the persons seised of estates of *freehold* or inheritance in houses or lands within the borough are called burgessees; and the tenants of such *houses* are called freemen, and the right of election rests in the burgessees, or if any of them seised of houses do not chuse to vote for them, then in the freemen, who are their tenants, along with the other burgessees. See the entries of 2d February, 1693, 17th April, 1694, 12th February, 1695, and 21st December, 1703.

Conditional
votes.

11. Journ.
P. 77. 163.
440.
14. Journ.
P. 258.

The annual value of a burgage tenement, as has been already observed, can never come in question before an election tribunal, except collaterally, for its present value is immaterial; but whether it pays that ancient annual rent which is now considered as incident to the tenure, and evidence of the entirety of the tenement is always material to be inquired into. That ancient rent ought to bear a very small proportion indeed to the present value of the estate. The highest burgage rent I recollect to have met with is at Steyning, 23*d.*; the next at Clithero, 1*s.* and 4*d.*; and therefore the decision respecting Weobly, which is a borough by prescription, 3d March. 1736, that the right of voting rested in the owners and inhabitants of ancient vote houses of 20*s.* value and upwards, was probably founded in mistake. The

Annual value.

ante, p. 270.

House

Annual value. House might give too great weight to modern usage, or in a case so peculiarly circumstanced, where the sitting member was dead, perhaps a compromise might be intended.

Of the interest in burgages.

In fee.
17. Journ.
p. 482.

Freehold.

8. Journ.
pa. 90.

Ib. p. 387.

10. Journ. p.
47.

The interest which the burgage tenant must have in the premises for which he votes is regulated by the prevailing usage in each borough. In some places the right of voting is confined to tenants, who are seized *in fee* of their burgages. Richmond, 4th March, 1713, a petition states the right of election to be "only in the real owners of burgage houses."

But in general, it is extended to those who have a *freehold* interest, *i. e.* who are seized in fee or for term of life. Thus,

Clitheroe, 16th July, 1660. "The question was, whether the freemen at large, or the free burghers seized for life, or in fee, of borough lands, or houses there," had the right of electing members, and the House agreed with the committee, that the said free burghers had the right. The same question was agitated in the next year, and 4th February, 1661. The House agreed with the committee, "that according to the judgment in the last assembly, such freeholders only as had estates for life, or in fee, had the right of election."

Old Sarum, 14th March, 1688. The House resolved,

resolved, that the right of electing and returning members, was in the freeholders, being burgage-holders of the said borough.

Interest in
burgages.

Bletchingly, 25th November, 1695: The petition stated, that the petitioner had been chosen "by the majority of the *burgesses*." 5th Feb. 1695, the committee made its report, from which it appears, that the right was admitted on both sides to be in the *freehold tenants of burgage houses*, and the disputed titles were made out by production of regular conveyances.

11. Journ. p.
337.
1b. p. 430.

Ashburton, 26th February, 1707. The right of election was in question, and the House resolved it to be "in the freeholders having lands or tenements holden of the said borough only." Upon a motion to leave out the word *only*, a balloting took place, and it was carried in the negative, 189 to 148. On 17th March, 1710, the right, as above stated, was agreed to; but the petitioners alledged, that there are in the parish of Ashburton two manors called Halshanger and Halwell, holden of the manor of Ashburton; and that there are divers freehold lands and tenements, lying within the borough called Halshanger and Halwell Lands, that belong to the borough and pay a borough rent; and that all the freeholders of these lands have a right to vote. It was proved, that the lands lie intermixed in the vill, are within the district of the borough,
and

15. Journ.
P. 577.

16. Journ.
P. 557.

Interest in
burgages.

and pay an annual rent of 40s. or 50s. to the borough, which they apportion among themselves; that the names of the free tenants of these lands are in the borough rolls without any distinction; they do suit and service, and serve offices at Ashburton, and none but tenants of burgage tenements serve offices there; and there was also strong proof of usage in favour of their right to vote, &c. On the other side it was insisted, that this borough is an ancient demesne of the crown, that the manors of Halwell and Halshanger pay a burgage rent, and are as one burgage tenement, and only one vote ought to be admitted for them. Some witnesses were called, and evidence given of there being a reputation in the borough that the tenants of these manors doing service in their courts ought not to vote; the committee resolved, that the freeholders of the lands and tenements called Halshanger and Halwell Lands, lying within this borough, and subject to pay a borough rent, have right to vote. The House agreed.

18. Jour.
p. 172.

Horsham, 16th June, 1715. It was agreed, that this is a borough by prescription, and that only *burgage tenants in fee or for life* have a right of voting; but for the sitting member it was insisted, that it was essentially necessary they should be presented by the homage jury, which was denied by the petitioner. The committee resolved, that

that the right is in all such persons as have an estate of inheritance, or for life, in burgage houses or burgage lands, lying within the said borough. The title deeds of the voters were produced to substantiate or destroy their votes, and objections made to those who could produce none.

Interest in
burgages.

Beeralston, 6th June, 1721. On a petition of the free burgesses, the House resolved, *nem con.* that the right was in the freehold tenants of the said borough, holding by burgage tenure, and paying 3*d.* *per annum*, or more, ancient burgage rent, to the lord of the said borough, and in them only.

19. Journ.
P. 579.

Great Bedwin, 28th April, 1640. The question was, whether the election belonged to the ancient burgesses of the town, which were the bailiffs portreeves, and those that had been officers of the town, or in the inhabitants paying scot and lot. The committee being not satisfied it did belong to the ancient burgesses by prescription, determined in favour of the inhabitants; and the House agreed.

2. Journ.
P. 14.

16th May, 1660. The question being, whether the inhabitants in general ought not to elect, the committee were of opinion that the *burgesses at large* ought to elect, and the House agreed. Here *inhabitants in general*, and *burgesses at large*, seem to be used synonymously.

8. Journ.
P. 33.

Great

Interest in
burgages.

15. Journ.
p. 480.

20. Journ.
p. 44.

27. Journ. p.
391.

Ib. p. 417.

Great Bedwin, 22d December, 1707. The right of election was agreed to be in the freeholders, and the inhabitants of ancient burgage messuages.

25th October, 1722, is a petition of several of the *burgesses* of this borough against an election.

Appleby, 20th January, 1756. The petitioners stated the right of election to be in the freehold tenants of ancient burgage tenements within the borough. For the sitting member it was admitted, with this explanation, that the right was in the tenants of ancient burgage tenements, having estates of freehold, and not merely tenants in fee, which was acceded to. The hearing on this petition was continued during several days, and most of the objections which usually occur at elections for boroughs of this nature were made. On 29th January, the petitioners proposed to add to their poll a voter who had tendered his vote at the election, and been rejected. The evidence they tendered, was, that he "was in right of his wife possessed of the freehold of the burgage tenement for which he claimed to vote," and on the other side it was admitted, that the wife of the voter had been once, by virtue of a deed of settlement made by her former husband, tenant for life of the said tenement. No decision appears. On 3d February,

3d February, 1756, evidence was produced to disqualify four of the sitting members voters, on account of their being inhabitants of the hospital of St. Ann, in Appleby, and so not intitled to the freehold of the tenements for which they claimed to vote, and that the said tenements had not been deemed burgage tenements. The House did not come to any decision as to the validity of these votes; and on the 10th February, it seems to have ended by compromise; for it being admitted, that the petitioner had established the votes of 13 persons who had been rejected at the poll, and that those 13 votes made the numbers upon the poll for the sitting members and the petitioners equal, the several candidates were resolved to be not duly elected, and the election void.

Interest in
burgages.
Ib. p. 425.

Ib. p. 443.

From the cases of Westbury, 1st December, 1702, and 1st June, 1715, before cited, it appears, that burgage tenants, *holding only for terms of years*, may be privileged to vote. And in those of Weobly, 3d March, 1736, Bramber, 18th June, 1703, and Great Bedwin, 22d December, 1707, and 26th March, 1729, the *inhabitants* of burgage tenements were either admitted, or decided to have the same privilege.

For years.
pa. 285.

Inhabitants.

In many cases, the right has been claimed to be in burgage tenants *generally*, and their respective interests not specified in the Journals.

Bletchingly,

Interest in
burgages.1. Journ. p.
745.2. Journ.
p. 14.
Journ. p. 3.
Ib. p. 251.
9. Journ.
p. 290.10. Journ.
p. 419.2. Journ.
p. 10.9 Journ. p.
587.

Bletchingly, 22d March, 1623. The committee resolved, and the House agreed, that none but borough holders ought to have voice.

Beeralston, 28th April, 1640. The election appears to have been made by the *inhabitants*, 27th April, 1660, by the *freemen*, and 16th May, 1661, by the *burgesses*.

Boroughbridge. There is no last resolution or admission concerning the right of voting in this borough; but 7th January, 1673, there was a petition "of the burgesses and boroughmen" of this borough against the undue election of Sir Henry Goodrick.

Knaresborough, 17th May, 1690. The committee reported, "that the right of election was agreed to be in the burgage holders."

East Grinstead, 24th April, 1640. The question was, whether the right was in the free burgage holders only, or in the inhabitants as well as the burgage holders. The committee were of opinion the right of election original, and Mr. Goodwin, who had been chosen by the inhabitants, well elected.

East Grinstead, 7th April, 1679. The question was, whether the inhabitants at large, or the burgage holders alone, had the right of election. The evidence was so strong, that the counsel on all sides admitted, that the inhabitants had a right to vote. The committee resolved, first, that this was

Of Electors in Right of Tenure.

was an ancient borough by prescription, and then, that the inhabitants, as well as the burgage holders of this borough, had a right to vote.

East Grinstead, 27th Mar. 1689. The question was, whether the burgage holders, or the inhabitants as well as the burgage holders, had the right of election. The committee resolved, that the burgage holders alone, within this borough, had not the right, and that the inhabitants, as well as the burgage holders of the borough, had the right. The House disagreed to both resolutions.

East Grinstead, 9th January, 1695. The same question was again agitated, and the committee reported, first, that the right is not in the burgage holders and inhabitants of the borough, and then, that the right is in the *burgage holders* only. On the question, the House agreed to the first resolution, 221 to 128, and to the second without any division.

Midhurst, 5th Dec. 1710. Petition of Mr. Meredyth, on behalf of himself and Mr. Alcock, states, that they ought to have been returned, "they being elected by a majority of such as hold by burgage tenure, who only have a right to vote for the said borough."

Boroughbridge, 13th February, 1717. Several boroughmen of this borough petitioned against an election.

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Interest in
burgages

10. Journ.
pa. 67.

11. Journ. p.
384.

15. Journ.
P. 419.

18. Journ.
P. 729.

Y

Litchfield,

Interest in
burgages.

13. Journ.

P. 25.

19. Journ.

P. 35.

Litchfield, 10th May, 1701. The House resolved, that the bailiffs, magistrates, freeholders of forty shillings a year, and *all that hold by burgage tenure*, and then that such freemen only of the said city as are inrolled, and pay scot and lot, have also a right to vote.

10th Dec. 1718. The right of election was agreed to be in the bailiffs, magistrates, and freeholders of forty shillings per annum, and all that hold by burgage tenure, and in such freemen only as are inrolled, paying scot and lot. With this difference the petitioners counsel insisted, it was necessary the freemen should pay scot and lot at Litchfield, which was denied by the sitting member's counsel, who insisted, that the paying scot and lot, where the freemen lived, though not at Litchfield, was sufficient.

Resolved, that it is the opinion of this committee, that the right of election of citizens to serve in parliament for the city of Litchfield, is in the bailiffs, magistrates, freeholders of forty shillings per annum, and *all that hold by burgage tenure*, and in such freemen only of the said city as are inrolled, paying scot and lot there.

Of the title
deeds.

In how many of the burgage tenure boroughs the practice of making occasional voters, at the eve of an election, prevails, is not easy to be ascertained; but we know by recent judicial discussions,

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cussions, that it has prevailed in some of them for a long series of years: we know too, that counsel have supported the claims of these voters by arguments drawn from general usage, and that committees have established them (as far as they had the power to establish them) by repeated decisions. We may therefore assume, that the acquisition of the right of voting is in general the sole object in contemplation of the parties, but being annexed to a particular burgage tenement, that must be conveyed in the same manner, and with the same forms and solemnities, as required in the conveyance of other real estates to *bona fide* purchasers. And it has not been uncommon for returning officers to insist, at the poll, upon the production of their title deeds, before they were allowed to vote. Many instances occur, in which this has been done, as at Downton, &c.

Of the
title deeds.

Hon. Edward Bouverie, William Lucas, and James Selfe, voted for burgages belonging to the Earl of Shaftsbury, who had enfeoffed Mr. Ewer of them by a deed of feoffment on which livery of seisin was indorsed, but the names of the attornies to deliver seisin were written on an erasure. This deed was made in Italy, and attested by two witnesses now out of England, whose handwritings were therefore proved. It was contended, that this deed was defective, from those names being written on an erasure, for that the presump-

1. Lud.
P. 242.

Of the
title deeds.

1. Lud.
p. 246. 248.

tion was, as no evidence was produced to explain it, that the names written on the erasure had been inserted *after* the execution. The committee admitted these three votes.

William Lucas, James Selfe, and Thomas Goddard, their votes were objected to, because the deeds had been executed, and afterwards re-executed on the same paper, and the same stamps, on account of an alteration in the christian or surnames, or both, of the voters. It was objected, that there should have been fresh stamps, but it appearing that the grantees in both deeds were the *same persons*, but their names at first mistaken, the objection was not insisted on.

1. Lud.
p. 250.

William Scott, John Goodfellow. Their names, in their conveyances, were written on erasures. These deeds had been executed, with the proper solemnities, to other persons, who were neither present at the execution, or had any knowledge of the transaction. Their names were afterwards erased, and Scott's and Goodfellow's inserted in their stead, and the deeds re-executed in presence of the same witness, and upon the same stamp. These deeds were produced in evidence by the sitting members, on the requisition of the petitioners, and delivered to the clerk of the committee on the 6th of July, who had marked them as read, and then redelivered them to the agent for the sitting members. On the 12th, when

when the case of the sitting members was concluded, these deeds were produced again to the committee, with a new stamp affixed, on payment of the penalty, after they had been received from the clerk on the 6th.

Upon these facts it was objected to these voters, that they had no right whatever, at the time of the election, to their respective burgages, but that the persons to whom the conveyances had been first made became thereby entitled, and were alone capable of transferring them to others; that by the several stamp acts, the conveyances to the voters were void, as written on *old stamps*; and that having been produced in evidence to the committee, the subsequent stamping was null and void. To these objections it was answered, that these were mere voluntary conveyances to the persons first named, and the grants not effectual without their acceptance, and may be cancelled at any time by the party making it; that these grants, having no effect from the first execution, did not require stamps; that the erasures made a re-execution necessary, but not new stamps, for this was substantially *one* grant, taking effect from the *second* execution; that if new stamps were necessary they had been obtained, and in Westminster-hall deeds might be given in evidence, stamped even whilst the cause was trying. The committee resolved, that these votes were bad.

Of the
title deeds.

Of the
title deeds.

1. Lud.
p. 231.

The case of John Webb was this; his burgage was conveyed to him by one Edsal, of Truro, in Cornwall, by a deed of lease and release for lives, printed in a form common to both parties at this election, wherein blanks were left for the necessary names and descriptions. The burgage was thus described: "all that ancient burgage tenement, with the appurtenances, situate in the borough of Downton, in the county of Wilts, now or late in the tenure and occupation of _____," without the tenant's name. The blanks for the names and descriptions of the voter and the persons for whose lives the grant was made were filled up with a black lead pencil. The deed was properly attested, After an examination of one of the attesting witnesses, who swore he had made no particular observation on the deed when it was executed, but that Edsal had said that the deeds had been sent to him with the blanks all filled up, *except the name*, it was contended, that it must be presumed, the name omitted was the name of the voter, and a deed executed in blank is void. It was further argued, that if that objection was unfounded, the deed was void, because filled up with a black lead pencil, and so composed of materials liable to alteration or corruption, and Co. Litt. p. 229. and 2. Bl. Comm. p. 297. were cited. And lastly, it was objected, that the description of the burgage was uncertain, giving no boundaries, no tenant,

Of Electors in Right of Tenure.

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Of the
title deeds.

tenant, no distinguishing mark; and though this might suffice against the parties to the deed, yet it can have no effect against third persons. In answer it was said, that if the words written in pencil were inserted even *after* execution of the deed, but with the consent of the grantor, it would be good, and *Tecseira v. Evans* was cited. Here the freehold passed by the deed to Webb, and he acquired, as incident, the right of voting. That the passage cited from Lord Coke relates only to the materials to receive the writing, not the writing itself, and pencil is as good as ink to express the intent of the parties, if it is as legible. And as to the uncertainty of the description of the burgage, that may be cured, as was done here, by evidence; and if the grantor has but one, that one passes by the grant. The committee resolved that the vote was good.

The tenement must not only be formally conveyed to its present owner or possessor, but in case his vote is contested, he must be prepared to deduce his title with as much regularity and nicety, as upon the trial of an ejectment. And *Westbury*, 1st June, 1715, even in the case of a bona fide purchaser of a burgage tenement, and where the purchase money had been actually paid, the want of a surrender of a copyhold estate was made an objection.

Of deducing
the title.

18. Journ.
P. 150.

Tenant must
be in pos-
session.

The grantee must be in possession of the burgage tenement, so far at least as is necessary to give him a compleat title, before he can be entitled to vote. This possession is usually given by means of the lease for a year, which precedes the deed of release, and it seldom happens, that voters are in the actual possession of the tenements, either by occupying them themselves, or receiving the rents and profits from those who do occupy them.

13. Journ.
P. 127.

Pontefract, 17th January, 1699. The objection to one Elkanah Hatherwight was, that the mortgagee was in possession of his burgage, and he had only an equity of redemption; but to this was answered, that his father made a lease for ninety-nine years, and he voted as having the fee.

18. Journ.
P. 173.

Horsham, 16th June, 1715. John Reynolds was objected to, as voting by a title from his master, Mr. Eversfield, who had only a mortgage from John Hargrave, deceased, dated 11th and 12th January, 1714. The petitioner, Arthur Ingram, Esq. had obtained an absolute conveyance of the burgage from the heir of Hargrave, and had offered to pay off Mr. Eversfield, who had given a note under his hand to reconvey, upon payment of principal and interest in six months. But in answer to this, an absolute conveyance from Mr. Eversfield to Reynolds for his life,

life, dated the 24th Jan. 1714, was produced, but the witness to the deed saw no money paid. Another objection to Reynolds's vote arose from old Hargrave having been on the homage in Oct. 1714, and from thence it was inferred, that Mr. Eversfield had not possession, and consequently could not make a vote.

Tenant must
be in pos-
session.

At the common law, the possession of land is *prima facie* evidence of the possessor having a right to the fee simple of it; but in the case of Westbury, 1st June, 1715, it was objected, in the discussion of more than one vote, that possession alone of a burgage tenement, without a title, was not sufficient to support a vote. But where a person has been in the adverse possession of a burgage tenement for twenty years, and by that means has acquired such a title as would be a bar to an action in ejectment, his tenant has been allowed to vote, as in the Downton case, where the votes of Moses Wiltshire, and the Reverend James Foster, were established upon that ground.

18. Journ.
P. 153.

After the election, it might be dangerous to leave the voters in possession of their tenements, and therefore the title deeds, as soon as they have been used at the election, are generally returned to the grantor, and at some period before the succeeding election the deeds are again delivered out to the voters; or reconveyances made, with all due

1. Lud.
P. 199. 216.

Tenant must
be in pos-
session.

3 Lud.
p. 177.

due solemnity, that the proprietor may grant them out again to make other voters.

Downton, 1785. Several voters, who derived their titles from the Earl of Radnor, were objected to, for the want of a reconveyance of their burgages to his lordship. The election took place on the 26th of July, 1784, and by deeds of lease and release, dated a few days before, viz. on the 16th and 17th of the same month, made between W. Scott, LL.D. and eighteen others, who it seems had been voters, on the one part, and the said Earl on the other. They conveyed their and each of their "several messuages" or tenements, burgages, lands," &c. to Lord Radnor, his heirs and assigns. Both lease and release bore the usual stamps required for *one* deed. If these deeds were not admissible in evidence, Lord Radnor's title to these burgages, and consequently that of the voters derived from him, was not good. The committee, after hearing arguments, were of opinion, "that the deeds of reconveyance are void by the stamp acts, as to all parties except the first person mentioned in each deed; and with respect to such first person, they give at present no opinion."

Of equitable
titles.
See vol. 1.
p. 62.

By the common law, the person entitled to the legal estate of the burgage tenement, if we may
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be allowed to argue from the case of other freehold property, would be entitled to vote; whether he held as a trustee, or in his own right, could not be the subject of inquiry, nor could his seisin or possession give the privilege to another as his *cestui que trust*. So many freeholders were hereby disqualified, that by the 7 and 8 W. III. c. 25. s. 7. it was enacted, that "no person or persons shall be allowed to have any vote in election of members to serve in parliament, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate; but that the mortgagee, or *cestui que trust* in possession, shall and may vote for the same estate, notwithstanding such mortgage or trust."

Of equitable titles.

This act of parliament is not confined to county or any other elections; and this clause in particular is worded in very general terms. In the case of Horsham, 16th June, 1715, it seems to have been taken for granted, that it relates to burgage tenants, as well as any other class of voters, for several of them were objected to as "voting under a trust, but none appeared."

18. Journ.
P. 174.

But, before the Downton committee in 1784, in the case of Thomas Wornell, it was strongly argued, that this part of the clause did not apply to burgage tenants. The late Mr. Duncombe died

1. Lud.
P. 147.

Of equitable
titles.

died in November 1779, and devised his property in the borough of Downton, together with his other estates, to three trustees, and their heirs and assigns, "to the use of them, their heirs and assigns, upon trust, so soon as conveniently might be after his decease to convey the said estates to the use of his daughter, Anne Shafto, for her life, with remainder to the trustees to preserve contingent remainder to the use of Robert Shafto, second son of his said daughter Anne, in strict settlement, with other remainders over." Mrs. Shafto died in 1783, leaving her second son Robert, an infant. Mr. Shafto, by the authority of the trustees, received the rents, and managed the estates for his son's benefit. Before the last election, the trustees executed conveyances of Mr. Duncombe's burgages to the several voters, by deeds of lease and release for lives, at stated rents, the sums of which were various. These deeds were all in one form, which was printed. The trustees stile themselves, in these conveyances, "devisees of the legal estate of inheritance, in trust, named and appointed in the will of Thomas Duncombe, Esq. of and concerning (among other things) the lands and hereditaments hereafter mentioned." Thomas Wornell voted under one of these conveyances made to him of an ancient burgage, in the borough of Downton
for

for two lives, paying a rack rent, dated the 20th and 21st March 1784.

Of equitable
titles.

The counsel for the sitting members contended, both from the principles established in chancery with respect to trust estates, and from the statute of 7 and 8 Will. III. c. 25. s. 7. that this conveyance gave no title to the voter. These trustees are mere instruments of conveyance, and if a trustee conveys to one having notice of the trust, the grantee thereby becomes a trustee for the purpose of executing it, which in this instance is to convey to the *cestui que trust*. Thus the voter is a trustee for the infant, and has no beneficial interest in the thing conveyed.

With regard to the first part of the seventh section of the statute just mentioned, that seems to put the question out of doubt. This statute is general in all its objects; the title of it is; "For the further regulating elections of members to serve in parliament, &c." The preamble takes notice of the injuries done to voters in their rights of election; and to persons elected no words can be more extensive. The 7th section comprehends estates of every denomination, and in the second clause of it expressly enumerates every place of representation. In short, there is no expression that can be construed to limit the provision to counties, or to except burgage-tenures.

In

Of equitable
titles.

In answer to the objection, that this statute is not general throughout, because the second clause of this section has been determined not to extend to burgage tenures, it was observed, that this is owing entirely to the subject matter of the clause. It is to prevent the multiplication of votes by splitting, which is an unnecessary regulation in burgage tenures, where it has always been the established law, that no more than one vote can be given for one burgage, which cannot from its nature be subdivided. But the former part of the clause is as applicable to votes by burgage tenure as any votes for counties. Here the trustees are admitted not to be in the receipt of the rents and profits; and if the beneficial interest be in another, the right must be derived from him. The trustees could not vote themselves, and no derivative title can be better than the original one.

On the other side it was said, that it is an established principle, both in law and equity, that the owner of the legal estate may make what use he pleases of it against all persons but the cestui que trust. All the acts of the trustee are valid, unless questioned by him. Here the estate is fully in the trustees, till they convey it to the infant, and they are accountable only to him. The only difficulty arises from the words of the statute; but something more than the words must be

be attended to, to get at the true construction: thus the second part of this clause has been decided not to relate to burgage tenures, (a) and yet the words are more general than in the first part, and certainly include them. It is not essential to burgage, that the grantee should receive any profit from it; many undoubted burgages give no profit at all, as Old Sarum, Knareborough, &c. scites of houses, deserted shambles, gravel pits, and here at Downton, a pool of water, give the right of voting. To extend the statute to burgages would destroy that property through the kingdom, and for seventy years it has never been understood to extend to it. But supposing the act to extend to burgages, it can have no application in the present cases; the act only applies to cases where there is a *cestui que trust*, or a mortgagor *in possession*, and gives *him* a power to vote, for before this statute, the owner of the legal estate might have turned the beneficial proprietor from the poll. The statute does not annul the right of the trustee, but where another who has the substantial property appears, transfers it to him. Moreover, no person but the trustee is intitled to receive the rents, accountable indeed hereafter to the infant, and therefore within the words of the statute, they are in receipt of the rents.

Of equitable
titles.

(a) In the two former cases of Downton.

After

Of equitable
titles.

3. Lud.
p. 205.

After the arguments on both sides were concluded, the committee resolved, that the vote of Thomas Wornell was good.

In the Downton case, 1785, the same question was agitated, as affecting several votes, and all the circumstances of the case were the same, except that now it was denied, that the trustees were in possession and receipt of the rents. It was proved, that Mr. Shafto, after his wife's death, received the rents for his son, the infant; that in Mrs. Shafto's time, the steward received them for her. It was contended, that Mr. Shafto's receipt, after his wife's death, was necessarily on behalf of the trustees, who alone had the right to them in point of law. On the other side it was insisted, that the trustees had no such right in the estate, but merely a right to convey it. The committee, on the day after the arguments, determined, "that the votes objected to were " good."

Of the
identity of
burgages.

2. Fraser,
p. 56.

The important privilege annexed to ancient burgage tenements has occasioned the election tribunals to require very strong and precise evidence of the identity of each specific tenement and its contents. This is generally ascertained, either by the description in the title deeds, or the production of extrinsic evidence, and in either case there are (as was justly observed by the counsel for the sitting members in the case

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Of the
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of Horsham, 1792,) five points to which the enquiry will naturally, though not exclusively, be directed. "1. The *name* of the burgage, which "if found in all the deeds to be the same, "would afford a presumption in favour of the "identity of the burgage.—2. The *contents*, "which are extremely necessary to be considered in this tenure, because if any part of "an aggregate specification were afterwards "omitted, that omission, if not satisfactory account were given of it, would undoubtedly "destroy the vote.—3. The *boundaries*, which, if "all along described in the same manner, will "create a strong presumption in favour of the "contents.—4. The *rents*; for though rents may "be released or abandoned by the lord, where "that is not the case, if the rent is lessened, and "the contents are not proved to be the same, "the presumption is, that the burgage is not "entire (*a*).—5. *The situation of the streets.*" (*b*)

Rev.

(*a*) The petitioners counsel, in the case of Downton, 1784, laid down, that "where one rent includes a number of burgages, it is to be presumed that the burgages are separate, "as the name imports, till the contrary be shewn; but where "a divided rent is paid for the nominal *division of a burgage*, "there it is to be presumed to be a real division of the burgage, till proof be made of its entirety."

1. Lud.
p. 192.

(*b*) Allusion was also made to the following propositions, which are found in 3. Lud. p. 210.

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1. In

Of the
identity of
burgages.

1. Lud.
p. 216.

Rev. James Foster, one objection arose from the form of expression in his conveyance, his burgage (being one of those called quarter-burgages, and held by the quit-rent of 3*d.*) was conveyed in these words, "all that cottage, messuage, tenement, and dwelling house, paying "3*d.* and commonly called one quarter of a burgage, &c." This last phrase was said to be improper, and *ex vi termini* importing it to be no burgage, for though the irregular burgages, called *half and quarter burgages* were allowed and established in Downton, this tenement not being described in the common form, but as *a quarter of a burgage*, it was incumbent on the counsel to prove, in fact, that the subject of the grant for which the vote was given was an entire burgage. This, after some little debate, was

1. In a proper burgage tenure borough, the right to vote is incident to the freehold interest of every burgage.
2. Such right may be suspended, but cannot be extinguished.
3. Every ancient tenement, situate within such borough, and held by socage tenure, is a burgage.
4. The characteristics of a burgage are, that the tenant is liable to pay to the lord of the borough a rent certain, a relief upon descent, and a fine upon alienation.
5. The question, whether a tenement is or is not a burgage, being a question of prescription, the affirmative may be established by any of the modes of proof by which other prescriptions or customs are proved.

agreed

agreed to by the committee, and the fact was established to the satisfaction of the petitioner's counsel.

Of the
identity of
burgages.

William Jameson was objected to, only because his deed described his tenement as four acres, and the roll described it as three. The committee held the vote to be good.

2. Frazer,
P. 123.

Samuel Toovey claimed to vote for "all that messuage and tenement, with the garden and appurtenances," &c. and the entry referred to was of "one messuage, one barn, one garden, and one orchard, with the appurtenances." It was objected that the word appurtenances in the conveyance to the voter, could not convey a barn and orchard, and that there being no orchard, now it must be supposed, that if there had been one, it had been severed, but he was held to have a good vote.

2 Frazer,
P. 78.

Thomas Goddard was objected to, because his tenement could not be proved an ancient tenement by the quit rent roll. In answer it was proved, that Lord Feversham had purchased thirteen burgage tenements of Ashe, for which only twelve votes had been made at this election; that eleven of them only had voted, to whom eleven entries in the roll had been applied, and consequently two more remained; that this burgage was one of those derived from Ashe, and consequently must be described by one of the

1. Lud.
248.

Of the
identity of
burgages.

remaining entries, but which could not be ascertained.—One of the entries was, “For that late “Davis’s — 1s.” the other, “For that “bought of W. Snelgar and Mowlands — 8d.” A witness swore, he had heard that Goddard’s tenement was that named Davis’s. Under these circumstances, the only objection was, that as both parties had all along proceeded on an admission of the necessity of proving the payment of an *ancient certain* quit rent, in order to ascertain a burgage title, the vote was bad, for the utmost that could be said in support of it was, that his burgage must have paid one of two rents, *i. e.* either a shilling or eight pence. The committee admitted the vote.

2. Frazer,
P. 75.

John Dendy, junior, claimed to vote for premises for which the original burgage rent was 1s. 6d. but in a recovery suffered in 1789, the rent was stated to be 1s. and 9d. It appeared, that the owners of this burgage had signed several ancient returns down to 1714, and it was argued, that a variation in the rent is not of itself sufficient to destroy a burgage, if the unity of possession has remained. A liability to pay the lord’s quit rent is sufficient, besides, it might be presumed, that some other piece of burgage land has been added to increase the rent 3d. The vote was decided to be good.

Where there are no traces left of ancient boundaries,

daries, and from the tenement having been united with adjoining ones, or from other circumstances, it is become impossible to describe it in the conveyance to the voter, or to point out the divisions of the land in fact, the vote has been lost.

Of the
identity of
burgages.

Horsham, 16th June, 1715. A voter was excepted to on account of the uncertainty of his burgage, in 1702: the homage presentment of him is, as heir of his father, to a certain burgage tenure, which they cannot describe.

18. Journ.
P. 174.

Before the Horsham committee, in 1792, the votes of Richard Williamson, Alexander Luxford, and Stringer Shepherd, were objected to. Each of them claimed under a conveyance of one sixth part, the whole in six equal parts to be divided, of two fields, formerly one field, which had been six entire burgages, and paid rent as such; their votes were admitted to be bad.

2. Frazer,
P. 107.

Downton, 1775. It appeared, that in this borough there have been, from time immemorial, distinct and separate tenements, giving a right to vote, known by the names of burgages, half burgages, and quarters of burgages. The rent always paid to the lord for a whole burgage has been one shilling, for half a burgage six pence, and for a quarter of a burgage, three pence. A quarter of a burgage or half a burgage are technical terms, not expressive of the fourth parts, or the

1. Dougl.
pa. 218.

Of the
identity of
burgages.

halves of whole burgages, but of distinct and separate tenements of various extent, and apparently so called, because the quit rents they pay are halves or quarters of what whole burgages pay.

Six persons claimed to vote under conveyances from Mr. Duncombe, each of a quarter of a burgage of land in what is called Legg's farm. It appeared that Legg's farm, was entered in the court-books as paying ten shillings rent to the lord; but no traces could be shewn of any part of it having formerly consisted of quarter burgages. It came in its present state by mesne assignments from one Mr. Legg to the Duncombe family, and no boundaries could be discovered, separating it even into distinct whole burgages. (a) No attempt to divide it into quarters could be found before 1708.

Four others voted under conveyances of quarters of burgages of land in Butts Close, a piece of ground paying four shillings rent. This came entire to the Duncombe family in 1700, and there were no houses, or divisions of the land into distinct tenements,

(a) In the case relating to this borough, in 1784, it appeared that some divisions were afterwards discovered in both this and Farr's farms. See 1. Lud. p. 172, 177, and see post, pa. 322.

One voted for a quarter of a burgage of land in Farr's farm.—This, consisting of five burgages and a half of land, was sold by one Farr to Mr. Duncombe's family, 21st April, 1708, and the rent paid for it was five shillings and six pence. There were no divisions in this land.

Of the
identity of
burgages.

One voted for a quarter of a burgage of land in Dawe's farm. This was sold in 1708, by Dawe, to the Duncombe family, as two burgages, and it paid two shillings rent. There was no trace of its having ever contained ancient distinct quarters of burgages.

These several voters were objected to, as well for occasionality, as for not being tenants of ancient quarters of burgages carrying immemorially a right of voting, but of quarters of burgages carved out of larger tenements, and so ill described in the conveyances as to make it impossible to say what part of such larger tenements passed.

In answer to the objections made, it seems to have been admitted, that as voters for quarters of burgages, these could not be supported, but as the abovementioned farms contained more whole burgages than the parts conveyed, there had not been more carved out of them than they would bear, and as the purpose was to grant that property which would carry a vote, though undescribed in the deeds, and called a quarter of

Of the
identity of
burgages.

a burgage in the deeds, a whole burgage passed; and as to there being no boundaries described, if a man grant an acre out of his field containing many, the grantee may take his acre where he will in the field.

In reply it was urged, that it was doubtful how far whole burgages could be granted out of these farms, so as to convey a right of voting, because there are no traces of the separate burgages remaining; and though a grantee of an acre might take it where he pleased, yet a burgage not being like an acre of known measurable extent, it is impossible to separate it; besides by the conveyance of *a quarter* of a burgage, a whole one cannot pass.

The decision of the committee on the validity of these votes does not appear in the minutes; but the committee determined ultimately against Mr. Duncombe, who had attempted to support them, and in the arguments in the Downton case in 1784, it was taken for granted, that they had been decided to be bad votes.

1. Lud.
p. 183, 193.

1. Lud.
p. 169.

Downton, 1784. Questions relating to some of the same burgages were again agitated, but the voters did not claim by virtue of quarter burgages, but of whole ones. These voters, eleven in number, were objected to as holding tenements that were only subdivided, and uncertain parts of burgages. Five of them had voted for whole burgages

burgages in Farr's Farm before mentioned, to which they had belonged as far back as living witnesses could remember. They now consisted of five separate tenements, but no account was given of the half burgage. A surveyor, who had been employed by Lord Feverham, in 1745, to survey the borough, and ascertain his burgages, produced the plan he had then made, in which were names and descriptions taken from a rent roll, kept by his Lordship's steward, and these burgages were described in two parcels, one on the north side of the street, paying 3*s.* and 6*d.* burgage rent, now consisting of three houses, and the other on the south side, paying 2*s.* now consisting of two houses, but divided by the surveyor into three, because it was intended to make three of them in future.

Of the
identity of
burgages.

Four whole burgages had been granted out of some meadow land, that went by the name of the White Horse; the description of the premises in each of these deeds was, "all that ancient burgage, situate or being within the borough of Downton, in the county of Wilts, part of the land belonging to the White Horse." The entry in the quit rent roll was "G. Eyre for part of that land belonging to the White Horse, — 1*9s.* 9*d.*" being the rent for nineteen burgages and a half. The number of the present divisions of this property, and whether there were

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identity of
burgages.

were any, was disputed; but there certainly were not so many as to answer to the rent.

Two whole burgages had been granted out of the land mentioned before, called Legg's Farm, each described as "an ancient burgage, situate" or being within the borough of Downton, in "the county of Wilts, part of Legg's Farm, "formerly in the possession of I. Plasket." The entry in the quit rent roll was of the entire sum of 10s. It was proved, that there were marks of this land having been anciently divided into ten parts. *There was no evidence of more than one vote having been allowed for any of the estates at any former election.* The committee resolved not to admit these eleven votes. In 1785, it appears from Mr. Luders's report, that these votes were again made the subject of contention, and that they were differently modified from their state on the last election, and further evidence was adduced relating to them; but the committee came to no decision upon them, on account of the sudden turn by which the cause came to its conclusion.

3. Lud.
p. 209.

See p. 304.

In John Webb's case, there was no description of the burgage in the deed, yet the burgage was ascertained by evidence, and the vote deemed good.

Burgages not
within the
splitting act.

An ancient burgage cannot be split so as to give more than one person a right to vote, but where it has happened that several burgage tenements

ments have come into one hand, the owner can vote only once for them all; but the distinct rights of every burgage, though dormant in his hands, were never lost, and revived immediately on the separation. Therefore it has been argued, that by splitting burgage tenements the number of votes (as in the case of common freehold) could never be increased beyond the number of original burgages, and the inconveniences which the second clause of the 7 and 8 W. III. c. 25. s. 7. was meant to remedy, could never arise from freeholds of this description. The words of that part of the clause are,

Burgages not
within the
splitting act.

ante p. 288.

And "that all conveyances of any messuages, lands, tenements, or hereditaments, in any county, city, borough, town corporate, port, or place, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are hereby declared to be void and of none effect; and that no more than one single voice shall be admitted to one and the same house or tenement."

It does not seem, however, to have been always the current opinion, that burgage tenements were exempted from this act.

Horsham, 16th June, 1715. One George Bridger was excepted to as a split vote made under

18. Journ.
p. 173.

Burgages not
within the
splitting act.

18. Journ.
p. 174.

1. Dougl.
p. 209.

under Sturt. To which it was answered, the division was before the statute.

One John Lintot had five burgages and a half, paying 5s. and 6d. rent, and almost two years before had conveyed premises to five persons for lives, who tendered their votes; it was answered, that all these conveyances were made the same day, and objected that they were split votes and fraudulent; and the tenants of several parts of these lands said they held under Mr. Lintot, and constantly paid their rent to him.

But the question was fully discussed in the Downton case in 1775, and the committee decided, that this statute did not apply to burgage tenure.

One general objection, applicable to most of the votes for the sitting members, was *occasionality*.

The conveyances to some were made by Mr. Duncombe in 1768, but the deeds had remained ever since in his hands; notwithstanding these conveyances, the occupiers had continued to pay their rents to him, and expected to do so when they became due again, considering him as their landlord, and being unacquainted with the grants made to the voters; and there were no entries on the court rolls of 1768 of those conveyances, nor of the payment of the alienation fines.

The conveyances to others appeared to have been printed at the expence of Mr. Duncombe, and executed after the writ and precept had issued, some being brought wet to the poll. The grantees did not know where the lands contained in them lay, and one man at the poll produced a grant for which he claimed a vote, which on examination appeared to be made to another person.

Burgages not within the splitting act.

Mr. Duncombe, at the poll, forbad the voters to answer any questions about their conveyances. The consideration in them all was five shillings. The rent twenty shillings a year. They were by lease and release for life, with a clause of re-entry if the grantee should assign without the consent of the grantor.

It appeared, that the practice of making such conveyances about the time of an election had long prevailed in the borough, and that the votes so made were known by the name of *faggots*. (a) At the two last contested elections, one forty-seven years ago, and the other in 1747, *faggots* were polled on both sides, but there were no petitions. It was objected on the part of the

(a) The same name is given at Saltash to votes made colourably about the time of an election, and in the argument on that case in 1787, it was alluded to as a word perfectly well known, especially in burgage tenure boroughs. 2. Luders, 211, 216. They are known at Oakhampton.

petitioners,

Burgages not
within the
splitting act.

20. Journ.
p. 391.
25. Journ.
p. 481.

17. Journ.
p. 665.

petitioners, that the votes in question were colourable, fraudulent, and void, both by the common-law of parliament, and the beforementioned statute of William the Third.

To shew that votes of all descriptions, plainly colourable and fraudulent, were void by the common law of parliament, the cases of Stafford, 4th February, 1724-5, and Wareham, 19th January, 1747-8, were cited; and it was argued, that votes clearly fraudulent, and made merely for the purpose of an election, were bad, though dated more than a year anterior to the election; and the cases of Weymouth and Melcombe Regis, 3d June, 1714, were cited. It was insisted, that the meaning of the statutes against occasional freeholders and occasional freemen (*a*) is, that persons claiming to vote, who have become freeholders or freemen within the year, shall be presumed to have become so for the purpose of the election, and therefore their votes shall be rejected without further enquiry. So with regard to burgage tenure votes made *within the year*, they perhaps ought to be *presumed* to be occasional and fraudulent by analogy to the 3d of Geo. the Third, but certainly, if clearly

(*a*) Viz. 18 Geo. II. c. 18. s. 3. 19 Geo. II. c. 28. and 3 Geo. III. c. 15.

proved

proved to be fraudulent, they will be void, though made *more than a year* before the election. And here it being proved that the conveyances carried no beneficial interest, and were followed neither by possession of the estates nor even of the deeds, and the continuance of the grantor in possession is a badge of fraud, 1. Lev. 146. and no act of ownership had been incurred by the grantees, and therefore as well the conveyances made in 1768, as those made immediately preceding the election, were fraudulent and void; and to the last class it was also objected, that the writ of election and precept can only have in view those electors who exist at the time when they issue, and therefore voters, whose titles accrue afterwards, cannot exercise their right at that election.

Burgages not
within the
splitting act.

That those votes were bad, was also argued from the 7th section of the 7th and 8th of Will. III. for the conveyances in question being made in order to multiply voices, are void, and the votes claimed under them must, *a fortiori*, be void also.

The counsel for the petitioners insisted, that if the objection of fraud and occasionality prevailed, the petitioners must have a great majority, and that at all events upon other grounds on which some of the sitting members votes had been impeached, they must have a majority.

The

Burgages not
within the
splitting act.

1. Lud.
pa. 113.

The committee determined in favour of the petitioners, but on what ground does not appear.

On a vacancy by the death of one of the members, Mr. Duncombe was returned without opposition in 1779. He did not live to enjoy his feat. At the election occasioned by his death, Mr. B. Bouverie and Mr. Shafto were candidates. Mr. Bouverie was returned, and Mr. Shafto petitioned. The merits of the case turned upon the occasionality of the votes for Mr. Shafto. The determination of the committee (in 1780) was in his favour, by which they in effect decided, that the objection of occasionality did not attach upon votes by burgage tenure. At the general election in 1780, Mr. Saunders and Mr. Alexander Hume petitioned against the Honourable Henry Seymour Conway and Mr. Shafto, solely upon the ground of the returning officer having admitted "persons to vote under "fraudulent, occasional, fictitious, and illegal "conveyances," and the decision of the committee (in 1781) was conformable to the former ones.

2. Frazer,
P. 45.

Horsham, 1792. It was said by the counsel for the petitioners, that it was now generally understood, that the statute of Will. III. against splitting property did not apply to this species of freeholds, *because by the law of parliament burgages could not be split.*

The

The statutes of the 10 Anne, c. 23. and the 18 Geo. II. c. 18. against fraudulent conveyances made to qualify persons to vote, are expressly confined to electors for counties only; and when the statute 13 Geo. II. c. 20. relating to cities being counties of themselves was in agitation, it was moved, that the committee should be instructed "to receive a clause or clauses to restrain any persons from voting for the electing of members to serve in parliament for any city, borough, port, town, or place, in that part of Great Britain called England, unless such person has been in the possession of the franchise, for which he claims a right to give his vote, for a certain time to be limited, except he is entitled by *burgage tenure*, or that such right accrues to him by descent, marriage, birth, or servitude, or where the right of election is in a select or limited number of persons;" but it passed in the negative. And though subsequent statutes have limited a time for which most of the other classes of voters shall have been in possession of their franchise, before they shall be entitled to vote, there is no limitation with respect to electors of this description.

Occasional voters.

23. Journ.
p. 505.
20. Mar.
1739.

Conveyances made to create votes in burgage tenure boroughs, therefore, must stand or fall by the rules of the common law; but it has been argued

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Fraudulent conveyance of burgages at common law.

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p. 319, 322,
324.
p. 271.

21. Journ.
p. 294.

21. Journ.
p. 294.

2. Fraser,
p. 105.

and decided, that by the law of parliament (which is part of the common law) conveyances of burgage tenements, made under the most pregnant circumstances of legal fraud, for the purposes of an election, were good and valid. I shall here refer the reader to the Downton cases in 1775, 1780, and 1781, and Petersfield, 9th May, 1727, before cited, and that of Great Bedwin, 26th March, 1729, where it was agreed, that the right was in the freeholders and inhabitants of ancient burgages within the borough; but the sitting member insisted, that ancient burgages on the common also gave a right, and that the voters should have been in possession forty days before the election. The committee resolved the right of voting to be in the freeholders and inhabitants of ancient burgage messuages, and thereby gave their sanction to a practice which had long prevailed in this borough, of making conveyances of burgages four or five days before each election.

The following case shews strongly the absurd length to which the arguments on which those decisions rest may be pushed, for there a committee, sitting as a court of justice, were called upon to recognize titles as good for the purpose of giving votes, but as fictitious and fraudulent for all other purposes. John Burns voted for a burgage, which was asserted to be part of five burgages and a half, which had anciently belonged

to Richard Lintott. It appeared, that Lady Irwin had conveyed this land by another description to Philip Chasemore in 1780, and in 1787 he was presented by the homage, and admitted a burgess of the borough. A quo warranto was afterwards moved against Chasemore, to know by what authority he claimed to be a burgess, and he disclaimed his title, and divested himself of all his interest in the tenement. "This evidence was objected to, on the ground that Lady Irwin's act ought not to prejudice others; but it being answered, that in a burgage tenure borough, acts done by the proprietors of the land are always considered as affecting the rights of those who claim to vote under them, the objection was not pressed. The vote was left undecided."

Fraudulent conveyance of burgages at common law.

How far the Downton decisions, before alluded to, were consistent with the common law, the reader will be able to judge for himself from the following observations and cases. A distinction has sometimes been made between fraud and occasionality, as applied to the conveyances of real property to give a vote; but it may be doubted whether there is any real foundation for it. Lord Coke defines "*covin* to be a secret assent, determined in the hearts of two or more, to the defrauding or prejudice of another;" but it was said in Merrel Tresham's case, that *fraud* may

Co. Litt.
p. 357. a. b.

9. Rep.
p. 110. b.

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2. Frazer,
146.

be in the heart of *one* only. The covin supposed to exist in the present case is to defeat the right of the other voters. In the Oakhampton case, the counsel on one side said, that "if
" he were to attempt the definition of an *occasional* act, he should say it is that which in itself is *prima facie* fair and legal; but which,
" having in view a purpose by which a third
" person may be injured, shall not be valid
" against him, owing to his not being a party to
" it." In this sense there seems no material difference between an *occasional* and a *covinous* act, and a conveyance may be legally made, even at the eve of an election, of property which carries a vote, and the grantee immediately exercise his franchise, provided the real object of the conveyance was to transfer the property.

1. Doug.
P. 224.

Ib. p. 229.

But in the Downton case, 1775, fraud was defined by the counsel for the sitting members to be, "where the parties pretend to do some-
" thing which in fact they do not," and it seems to have been acceded to by the other side. It was further contended, that nothing which by law a man has a right to do can be said to be fraudulent, and if conveyances to make votes in that borough were to be called a fraud on the other electors, the suffering of a common recovery by a tenant in tail is a fraud on the donor. According to this latter definition, a tenement to
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which a right of voting is annexed may be conveyed for the express purpose of entitling the grantee to vote at an approaching election, provided only the grant is *bonâ fide* perfected, and with all the proper solemnities. But where there is any secret trust or understanding that the premises shall be reconveyed, or title deeds returned, after the election, it may be presumed that the conveyance was fraudulent, "because the parties pretend to do something which in fact they do not." (a)

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It is difficult to give a satisfactory account of the introduction into burgage tenure boroughs of the practice of making votes for the purposes of elections. Before the reign of Charles the 1st, a seat in parliament was not so much the object of pursuit as in after times. In his reign the commons daily grew in dignity and strength, till the whole power of the country fell into their hands. But the managing of elections does not seem to have been reduced to a science till after the Restoration, when, in the heat of party, neither side was very scrupulous about the measures which were to give them the victory in

(a) Such of my readers as wish to see this subject further discussed may be referred to the case of Downton, Haslemere, 2. Dougl. p. 326. Oakhampton, 2. Frazer, 69, &c. and see the 1st vol. of this work, chap. 5.

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8. Journ.
p. 288.

parliament. But even in those times the decisions of the committee of privileges and elections seem to have been generally made with a considerable degree of impartiality.

From the following cases it will be seen, that by the common law and the law of parliament (which is part of it) votes made under circumstances similar to those which have been decided to be good in the Downton cases have been frequently objected to, doubted, or decided against. The first case which I have met with is that of Downton, 3d July, 1661, which forms a curious contrast with those recently decided; for then "the question was, whether the out-livers that have freeholds, but no houses, within the borough had voices, the opinion of the committee, that they had voices;"—"but some members insisting that divers inconsiderable freeholders were fraudulently created," whereby the sitting members "obtained the majority of voices, concerning which some of the evidence was not heard," the question to agree with the committee was negatived by a single voice (109 to 108) and the report was re-committed, "fully to examine the said point of fraud." But no further proceeding appears in the Journals.

The next case in order of time is one which arose in a court of law out of a contested election in a borough, which is not now ranked among

among the burgage tenure boroughs, but at the trial was admitted by both parties to be one. Haslemere, 20th May, 1661, it was resolved, that the inhabitant *freeholders* have only voice in elections, but whether these freeholders were to hold by burgage tenure is not expressed, nor are there any circumstances disclosed in the Journals to explain it. Before we proceed to the report of the ensuing case, it will be proper to state the proceedings in the House of Commons which gave rise to it.

Fraudulent conveyance of burgages at common law.

8. Journ. p. 255.

Haslemere, 11th Nov. 1680. Mr. Treby reported from the committee of privileges and elections, that Sir William Moore, baronet, was not duly chosen, and that Denzill Onslow, Esq. and Francis Dorrington, Esq. were duly elected. "He further reports, that the said committee "having taken into consideration the matter of "the election and return for the borough of "Haslemere, in the county of Surry, that the "committee had agreed upon three resolves, to "be reported to the House, which he read in "his place; and are as followeth, viz.

9. Journ. p. 650.

"Resolved, that Sir William Moore, baronet, "is not duly chosen a burgess to serve in this "present parliament of the borough of Haslemere, in the county of Surry.

"Resolved, that Denzill Onslow, Esq. is duly "chosen for the same.

A a 4

" Resolved,

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" Resolved, That Francis Dorrington, Esq. is
duly chosen for the same.

" He further reported, that it did appear to the
" said committee, that William Rapley, bailiff
" of the said borough of Haslemere, did, upon
" the thirtieth of August, 1679, when the elec-
" tion of burgesses to serve in this present par-
" liament for the said borough was made; freely
" and openly declare and proclaim, that Sir
" Wm. Moore and Denzil Onslow, Esq. were
" duly chosen burgesses for the said borough,
" and did sign and seal an indenture, purporting
" their said election; but about three weeks
" after that time he did sign and seal an in-
" denture, purporting, that the said Sir Will.
" Moore, baronet, and J. Gresham, Esq. were
" duly chosen burgesses for the said borough;
" both which indentures he delivered to the
" sheriff, to be returned into the High Court
" of Chancery, and they were accordingly re-
" turned; and the said bailiff being examined
" by the committee, and interrogated why he
" did not make and return the said latter in-
" denture, he said, he did it at the instance
" of the said Mr. Gresham, who informed him
" there was no danger in so doing, and would not,
" nor did give any other answer or account con-
" cerning the same."

The House agreed with the committee in all
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their resolutions, and ordered the return to be amended, and then “ordered, that William Rapley, bailiff of the said borough of Haslemere, be sent for in custody of the serjeant at arms attending this House, to answer at the bar of this House for the misdemeanors by him committed in the election and return of members to serve in this present parliament for the borough of Haslemere.”

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On the 26th of November he was censured and discharged, paying his fees.

9. Journ. p. 664.

Mr. Onslow afterwards brought an action on the case against Rapley (*a*) for a false return. It was tried before Sir Francis Pemberton, Lord Chief Justice of England, at the Surry assizes, held at Kingston, on the 20th July, 1681. The defence first set up was, that the plaintiff was not a resident within the borough, as required by the 1 Hen. V. c. 1. but the judge overruled that objection. “It was agreed unto by the parties and their counsel on both sides, that the right of choice of burgesses for this borough to parliament lay in the burgage freeholders, resident and inhabiting within the borough, and none others.

Somers Tracts, vol. 1. p. 374.

(*a*) Mr. Douglas says, this case was reported in a little tract of Lord Somers, first published in 1681, and reprinted in the quarto edition of his State Tracts.—1 Dougl. p. 342.

“ Then

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“ Then the plaintiff’s counsel insisted and
“ proved, that there voted for him thirteen,
“ having good and unquestionable votes, unto
“ one whereof the defendant’s counsel excepted,
“ for that he, before the election, had mortgaged
“ his estate, which the party himself, present in
“ court, denied upon oath, and the court was of
“ opinion it had not been a good objection if
“ true, so long as the mortgager continued the
“ possession, and had the benefit of redemption
“ in him.

“ The defendant’s counsel said, there voted for
“ Mr. Gresham fourteen, having good votes,
“ which, if so, would have made a majority; but
“ the plaintiff’s counsel excepted to six of the
“ fourteen as being no good electors, for that
“ one of them lived not within the borough,
“ which was proved by ancient reputation and
“ perambulation, that the house where he lived
“ was left without the bounds.

“ As to the other five, the objection was, they
“ were no real burgage tenants, and that if any
“ conveyances had been made to them of bur-
“ gage lands, they were lately made, and fraudu-
“ lently contrived, to make votes against an
“ election; and because the defendant’s counsel
“ could not deny but these conveyances were
“ lately made, the court put the defendant to
“ produce and prove them, which was done; and
“ upon

"upon reading of them, it appeared, *two of the*
"*five were made after the test of the parliament*
"*writ, and three of them in order to carry on*
"*Sir Philip Floyd's election in the borough, about*
"*five years since*; two of them were conveyances
"by one Vallor, who had a garden of about
"thirty rods, of which they made jointures to
"their wives, each share being worth at best
"two shillings per annum; another of the five
"was made by a father who had a close con-
"taining two acres, and made a conveyance to
"his son of about a quarter of an acre, which
"always after lay undivided, and was constantly
"enjoyed by the father; another conveyance
"was made by a son-in-law to his father-in-law,
"of a cart-house; the last was a conveyance
"to one Jackson of a little tenement, but it was
"proved that collateral security was given to
"reconvey, and that the grantor had repaired it.
"As to all five, there appeared several badges
"of fraud, as a continued possession in the
"grantors, &c. and the several confessions of
"the purpose and intent of making them for
"the elections."

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"The matter appeared so foul, the court began
"severely to censure such proceedings as evil
"and unlawful. Mr. W. (recorder of G.) one
"of the defendant's counsel, stood up to justify
"the proceedings, and said it was part of the
"constitution

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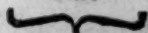
“ constitution of our government to do so. At
“ which the court seemed very angry, and won-
“ dered that any one, especially a man of the
“ gown, should say so, and said, do you think
“ our government has no better constitution?
“ with which the gentleman not being satisfied,
“ he was told by the court he deserved to be
“ taken notice of for saying so, and that he
“ seemed to have advised the thing done. To
“ conclude the evidence, the plaintiff's counsel
“ delivered into court ten or twelve several
“ conveyances, that were proved by the party
“ that wrote them to have been made by Mr.
“ Gresham's order *to make so many votes at a*
“ *former election*, wherein Mr. Gresham was con-
“ cerned, and the election being over, they
“ were cancelled and delivered up, concerning
“ which Mr. Gresham endeavoured to say some
“ thing by way of excuse, but was told by the
“ court, it was too bad to be excused, and *it was*
“ *well an act of general pardon had passed since*
“ *this was done, else he should have answered it in*
“ *another place.*

“ During the whole time of the trial the same
“ was managed with great patience and cir-
“ cumspection; for so soon as the cause was
“ opened by the plaintiff's counsel, the court
“ perceiving the nature of it, commanded silence
“ and attention in the jury, the court declaring
“ it

“ it was of great weight, as great as any that
“ ever came here to be tried. And the evi-
“ dence being fully given on both sides, the
“ court, by way of direction, told the jury, that
“ the plaintiff need not, as this case is, prove
“ any express malice in the defendant, for it shall
“ be intended, when a man shall do such an evil
“ thing as this is, contrary to his own know-
“ ledge and declaration made upon the election,
“ and afterwards also, for it was proved against
“ him by one or two witnesses, that a little time
“ before this trial he did confess Mr. Onslow was
“ duly elected, and that he had told Mr. Gresham
“ what would come of it.

“ And the court further told the jury, that this
“ was a cause of moment, and deserved more
“ than ordinary consideration; and that *the making*
“ *votes by such means was a very evil and unlawful*
“ *thing, and tended to the destruction of the govern-*
“ *ment, and debauching of parliament*; and although
“ some of the conveyances were made some time
“ before his election, to serve a turn at a former
“ choice, yet that they were fraudulent and void
“ in their creation, and ought not to be made
“ use of at any time against any other person;
“ and that *it was senseless to think such practices*
“ *were part of the constitution of our government,*
“ or to imagine that persons whom we entrust
“ with

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" with our lives and fortunes ought to be made
" and chosen by such evil devices; and that
" *such practices deserve to be severely punished*; and
" directed the jury to give signal damages.
" Whereupon the jury withdrew, and after a
" short stay gave a verdict for the plaintiff, and
" fifty pounds damages.

" And the court, in the course of the evidence,
" having observed one Billingham to be *much*
" *concerned in the proof and management of their*
" *fraudulent deeds*, conceived him to be privy to
" much of the practice thereabouts, and com-
" manded him to stay in court until the jury had
" given in their verdict, which when they had
" done, the court required him to find sureties
" to appear in the court of kings bench next
" Michaelmas Term, *to answer to an information*
" *touching the said misdemeanour*, and in the mean
" time to be of the good behaviour, which ac-
" cordingly he did do. And Sir Wm. Moore
" and Sir Geo. Woodruff, whom he had served
" in the last election at Haslemere, were his
" sureties. And the court required the plaintiff,
" Mr. Onslow, *to see that an information be preferred*,
" which he promised to do. And the court
" declared it was a very great offence, and should
" *be severely punished.*"

13. Journ.
p. 127.

Pontefract, 17th Jan. 1699. It appeared, that
Edward

Edward Foster's deeds of purchase were produced in court at the election, but he was refused his vote, because his deeds were dated three or four days after the test of the writ, though he yet enjoys the estate.

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Old Sarum, 11th Dec. 1705. A double return, one by the bailiffs and burgesſes, the other by the burgesſes only. Lord Grandiſon and Mr. Mompeſſon had petitioned againſt each other. Mr. Mompeſſon objected to one return, becauſe it was made by the bailiff of the manor, and not by the burgesſes, and inſiſted that the bailiff had nothing to do with the return. On the other ſide it was admitted, that the return muſt be by the burgators, but the precept ought to be delivered to the bailiff, who is the computer of votes. The committee did not come to any reſolution about the returning officer. The votes were even at the election, by Mr. Mompeſſon voting for himſelf, and now he produced evidence to ſubſtantiate two which had been tendered for him at the election, and been reſuſed, and to ſhew two others who had voted for Lord Grandiſon had no right. The evidence ſeems to have been pretty ſtrong againſt the right of the two intended to be added to the poll, and as to the two to be ſtruck off Lord Grandiſon's poll, it appeared that Carter had a leaſe made to him by Lord Grandiſon, in
April

15. Journ. p.
60.

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April last, for three lives, but he had received no rent, and gave his note for the purchase money, being £.225. The rent was £. 12. per annum, out of which 12*d.* per annum was reserved to Lord Grandison. Carter had been told after the election, by a witness, that he heard he took possession on the election day, and therefore thought he had no right, and Carter had said, he thought so too. And Swanton had a deed of lands in the borough, but it was not proved he had received any profits. It is probable, that the committee presumed one or other of these votes to be fraudulent and bad, for Mr. Mompesson was resolved to be duly elected, and the House agreed.

18. Journ.
p. 409.

Pontefract, 22d Mar. 1715. It appeared, that forty-one votes, offered to be added to the petitioners poll, did tender themselves for the petitioners, and were refused, “and on proving “their title before the committee, it appeared, “that the consideration monies were not paid, “but notes given as securities for the same.”

Horsham, 16th June, 1715. To add a voter to the petitioners poll, a conveyance was produced, but objected to, because executed after the teste of the writ.

18. Journ.
p. 173.

Horsham, 16th June, 1715. Several votes were objected to for occasionality; the conveyance to George Booker was executed after the

the teste of the writ, which was the 17th Jan. 1714. So was that to William Pash. The objection of occasionality seems to have been confined chiefly to conveyances made after the teste of the writ, and several made on both sides appear to have been executed in the month of January.

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Horsham, 16th June, 1715. It appeared that Nathaniel Sturt had conveyed to John Aylward only to give him a vote, and that security was taken for delivering up the title, which was accordingly done, upon the giving back that security.

18. Journ.
p. 173.

Horsham, 16th June, 1715. John Gratwick, jun. had only a colourable title to vote, and was under a bond to reconvey on request.—Richard Sayres was objected to for voting for Mr. Goodyer's House. It was proved by the tenants, that they paid their rent constantly to Goodyer. Mr. Goodyer said he had security from Sayres to reconvey, and that he made him only a colourable title to vote upon the two Mr. Wicker's solicitation, and promised that he should have £. 30. for it.

18. Journ.
p. 174, 175.

Westbury, 16th Mar. 1747. The election took place on the 29th of June, and many voters appear to have claimed to vote under conveyances, dated on the 10th, 12th, 15th, 17th, 21st, and 22d of that month, a few days only before

25: Journ. p.
571, &c.

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of burgages
at common
law.

3 Lud.
P. 377.

the election, and no objection was made on that account. And when voters were objected to as having voted under fraudulent leases, or none at all, and their votes impeached by strong circumstances of fraud and occasionality laid before the committee, the production of leases, some executed only a few days before the election, was the general answer. The committee came to no specific resolution on these points.

On 30th April, 1787, on an appeal in the case of the honourable William Elphinstone, Lord Thurlow, in the House of Lords, said;

“ I have been anxious to state this, as to what
“ I look upon to be the *right* of voting in Scot-
“ land. I am afraid, in *practice*, it has been re-
“ duced to the condition of a burgage tenure
“ here; and when I mention that tenure, it
“ may be necessary to make some observations
“ upon it.

“ I know the House of Commons is a com-
“ petent court to decide upon all questions of
“ the election of its own members; and I know
“ there stand upon their Journals various de-
“ cisions supporting burgage tenures, which I
“ do not mean to impeach, or throw the smallest
“ reflection upon in the world. There is a lati-
“ tude and a sovereign power that belongs to
“ the House of Commons, which, perhaps, ought
“ not to bind itself by those narrow rules a
“ court

" court of justice should go by. If the title
 " to a seat in parliament had been in England,
 " as now in Scotland, referred to the decision
 " of a court of justice, we might venture to
 " guess that a gentleman could not have been
 " at liberty to send his steward with ten or a dozen
 " parchments to be distributed among as many
 " voters round a green table, and then picked up
 " after the election was over. I believe that
 " could not have happened. But whether there
 " be, or not, that peculiarity in the burgage te-
 " nures of England, it is abundantly clear an
 " abuse like that does not exist in the constitu-
 " tion of Scotland. It is also undoubtedly clear,
 " by the statute of 1681, and various acts of
 " parliament, by which they have tried to secure
 " it against fraud since that time, that how slender
 " soever the beneficial interest may be that is
 " taken by the conveyance, it must be taken
 " *bonâ fide*, and be the absolute property of the
 " person pretending to property in it, and con-
 " sequently, if there be any means of impeaching
 " it with fraud, those means are open with respect
 " to this species of burgage tenure."

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The Horsham committee, in 1792, declined
 to accede to the doctrine of the Downton cases,
 and left open the question, whether the convey-
 ances of burgage tenements might not be oc-
 casional at the common law.

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2. Fraser,
P. 45.

There, in discussing the question, whether the sitting member should be permitted to offer evidence of the local usage in the borough, of splitting and dividing ancient burgages, the counsel for the petitioners argued, that it was now most generally understood, that the doctrine of occasionality did not apply in the transfer of burgage estates. But when the committee had communicated their resolution against receiving the evidence, there arose some conversation about its meaning, and the committee declared, "that they
" meant to leave it open to the sitting members
" counsel to shew, if they pleased, the occasion-
" ality of particular votes, for that *they were not*
" *of opinion*, with the counsel for the petitioners,
" *that because the ancient burgages could not be*
" *split, the conveyances of them could not be occa-*
" *sional*, but that if that question was meant to be
" agitated, the discussion of it ought to be
" brought on as soon as possible." It seems that the petitioners wished to bring on the discussion, and on a cross-examination of a witness by the sitting members counsel, took an opportunity of pressing to have the question argued. The sitting members, who had declined the discussion before, objected that they had a right to reserve it till it was their turn to open their case, and the committee resolved, that they did "not
" think it proper, in the present stage of the cause,

" to

“ to call upon the counsel to argue the question
“ of occasionality.” The counsel for the sitting
members dropped the course of cross-examination,
which had given rise to the dispute, and when the
cases of the sitting members votes were opened,
their counsel, Mr. Graham, said, that *a dread of
subverting a position very generally received*, though
not founded on accurate reasoning, together with
other considerations, had induced him to abandon
this ground. The counsel for the petitioners, in
his summing up, having also touched on this to-
pic, the committee intimated, “ that *as that ques-
tion (which was of great difficulty and importance)*
“ *had been waved* by Mr. Graham, it could not
“ be supposed to weigh at all in the judgment
“ they were about to form.”

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law.

The arguments against the right of a proprie-
tor of burgage tenements to convey them to his
friends and dependents, for the avowed purpose
of carrying an election, have generally been found-
ed on the fraudulent nature of the transaction, as
against the individual whose right of voting is
destroyed by the introduction of strangers. Even
the injury done to the candidate, whose prospects
are defeated, has hardly been noticed in the ar-
guments; but in the case of Onslow and Rapley,
it was taken up in a higher point of view, as a
breach of that freedom of election which the
commons of England have upon many occasions

Fraudulent
conveyance
of burgages
at common
law.

14. Journ.
p. 63.

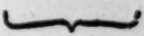
shewn a becoming jealousy to support, and without which representation can exist only in name: The right of voting is a solemn trust reposed in the individual by the public, to be exercised, not for the private emolument of himself or his friend, but for the benefit of the whole community. He who has accepted a bribe is not disfranchised because he has done a fraudulent act, to the injury of other voters, but because he has violated his trust, by putting his conscience under the controul of another, and rendering himself incapable of making a free choice, or exercising an impartial judgment on the merits of the candidates. The same reasoning applies to the disqualification of revenue officers, paupers, and others, whom the law presumes to be incapable of acting as free agents, and having a choice of their own. On this ground stands the objection made before the committee, Westbury, 1 Dec. 1702, against some voters, who had given bonds for £. 20 each, *to vote for Lord Abingdon's interest as long as they lived*; but it was offered to be proved in answer, that those bonds had been all publicly cancelled and destroyed long before the election, as soon as Mr. Robert Bertie, one of the petitioners, heard of them; but after the committee had directed the counsel to withdraw, they resolved the petitioner to be duly elected, so that their opinion does not precisely appear. So with regard to the

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the conveying of burgages, in order to make voters immediately before an election, the principal objection seems to be, not that either the rights of electors or candidates are infringed, but that the public sustains an injury, and the constitution itself receives a wound.

Praudent
conveyance
of burgages
at common
law.



The proprietor of burgages cannot carry on this practice without running some risque, for he must depend solely on the honour of the voter to perform his engagements. We have seen that the tenements must be conveyed with all the necessary solemnities, to give the tenant a good title; and it has been argued, that the grantee may take possession of the estate conveyed, refuse to return or cancel the title deeds or convey back his interest, and recover the profits from the grantor. On this subject the reader may be referred to the fifth chapter of the first volume, and the case of *Nightingal and Devisme* (*a*) cited there. If these conveyances of burgages are distinguishable from conveyances of other freeholds, and can be supported in a court of either law or equity, it must be still remembered, that questions may arise on their operation as voluntary conveyances, which may be highly dangerous to the interest of the grantor.

(*a*) It is cited there without the name of the plaintiff, from 1 Dougl. p. 223. but appears to be the same as is reported in 5. Burr. 2589. under the above name.

Superadded
qualifications.

We are not to suppose, that where the right of voting is incident to burgage tenements, there may not be some further requisite qualification collateral to the tenure, as residence, paying scot and lot, being presented by a jury, sworn in, or their names inserted in a book or register, having a right of pasture in a particular field, &c. as in the following cases (in addition to those of Weobly, Bramber, and Chippenham).

pa. 13.

25. Journ.
p. 576.

Westbury, 16th Mar. 1747. Seventeen voters were objected to by the sitting members, as non-resident within the borough. Some of them had been resident for three weeks, some a fortnight, some ten days, and some nine days, before the election. On the part of the petitioners the facts were not controverted; but it was observed, that most of those objected to lived constantly in the town; that several of them were proved to be resident in what the witnesses for the sitting members called *The Borough*, three weeks, none less than nine days, before the election, which was before the teste of the writ, and that the law has not, by any fixed time, determined what shall be deemed residence.

18. Journ.
p. 34.

Malton, 30th Mar. 1715. A petition of the burgeses, electors of this borough, complained, that several persons had polled, who did not pay scot and lot, and others living without the borough, pretending to be freeholders within it.

There

There was also a petition from the losing candidate, but both were withdrawn.

Superadded
qualifications.

Horsham, 16th June, 1715. It was agreed, that Horsham is a borough by prescription, and that only burgage tenants in fee, or for life, have a right to vote; but it was asserted by the sitting member, and denied by the petitioner, that it was necessary they should be presented by the homage jury. The committee resolved, and the House agreed, that the right was in all such persons as have an estate of inheritance, or for life, in burgage houses, or burgage lands, lying within the borough.

18. Journ.

P. 172.

Newtown, (Hants) 22d April, 1729. The right, on the part of the petitioner, was insisted to be in the mayor and burgesses of the said borough, having borough land within the borough.

21. Journ.

P. 337.

On the sitting members part it was insisted, that the right of election was in the mayor and burgesses of the borough, duly elected by the mayor and burgesses assembled.

The House resolved, that the right of election was in the mayor and burgesses of the said borough, having borough lands within the said borough. An amendment was proposed to be made, by inserting between the word "borough" and the word "having," these words, "such burgesses being duly elected by the mayor
" and

Superadded
qualifications.

21. Journ.
P. 48.

" and burgesſes aſſembled," but was negatived 151 by 95.

Newtown, (Hants) 13th Feb. 1727. Several perſons petitioned, ſtating, " that they were legally entitled to a burgage tenure, or borough land, belonging to the Newtown, in the Iſle of Wight, and thereby have a right to be ſworn in burgeſſes, to vote for members to ſerve in parliament, according to ancient uſage; that on the laſt day of election to parliament, the petitioners demanded to be ſworn, and tendered their title deeds; but the mayor reſuſed to read them, or to admit the petitioners to poll, alledging that they were not burgeſſes, becauſe they were not ſworn." This petition dropped at the prorogation of parliament, and was not renewed in the enſuing ſeſſion.

11. Journ.
P. 440.

Clithero, 12th February, 1695. The right was agreed to be in the bailiffs, burgeſſes, and freemen; but if the perſon that had the inheritance voted, the tenant could not; that the cuſtom of the borough is, every year to have an inquiry jury in that borough, whoſe office it is to inquire who are burgeſſes and freemen, and ſuch as are found by that jury are entered in a book, and have only uſed to vote at elections.

14. Journ.
P. 258.

21ſt December, 1703. The petitioner alledged the right to be in the bailiffs and burgeſſes preſented by the jury of inquiry, and ſworn by the
the

the bailiffs, and also by the freemen. That the burgesses are such as are seised of burgage lands of inheritance, and the freemen are the tenants to those burgesses, and have a right to vote when those who have the inheritance do not vote. The sitting member denied that it was necessary that the burgesses should be presented or sworn to give them a right to vote. The petitioner called witnesses to prove his allegation; the sitting member produced none; but it does not appear the committee came to any decision on this question. The objection went only to seventeen, which would not have given the petitioner a majority, and twelve of them were proved to have been found by a jury of enquiry in May, and had in June demanded a court of the bailiffs to swear; this one of them refused, but in July the other bailiff called a court and swore them in. Whether such court called by one bailiff was regular, does not appear. There were charges of corrupt practices and treating; but the sitting member was resolved to be duly elected.

Superadded
qualifications.

In Hilary term, 5 W. and M. a motion was made in the court of king's bench for a mandamus directed to the inquiry jury of Clithero, to compel them to present two persons to be freemen, without which they could not be presented by the bailiffs. Holt, C. J. at first refused it, saying, they would grant it to him who was to admit,
not

Comb. Rep.
239. Anon.

Superadded
qualifications.

1. Black. Rep.
p. 63, 64.

Ib. p. 60.
The King v.
Ld. Mont-
acute & others,
S. C. 1. Wilf.
Rep. p. 283.

not to them who were to present the truth of a fact upon oath; but upon searching the records in the case of Midhurst, which I shall state immediately, it appeared that a mandamus was issued in Michaelmas term in the same year, directed *ballivis et jurat'* (with a dash). This gave rise to an observation, that it did not go to the jury to present, but to the bailiffs and jury jointly; in answer to which the chief justice said, that it must be taken *reddendo singula singulis*.

The Midhurst case was this. It came on in Michaelmas Term, in the 28 Geo. II. and was a motion for a mandamus to the lord to hold a court baron, and to the homage to present conveyances of burgage tenures within the manor, on a suggestion by affidavit, that several conveyances were duly executed, and that at a general court they were offered to the homage, who refused to present them, and this court granted the mandamus, though there was ground to induce them rather to think that they were not legal conveyances; for if they could shew there has been no alienation, it would be a good return, the legality of the alienation belonging to another jurisdiction. In this case it was argued, that all burgage tenures are of the same nature; that the presentment required was only relative to the franchise of voting, the estate and freehold being vested

vested sufficiently without it, and if no presentment was made, the franchise only would be lost, and not the estate; and the case of the King and Christchurch, Mich. 12 Geo. II. was cited, where a mandamus was granted to the steward of a court leet to hold one, and to the jury to present to the steward one Day, who had been chosen mayor. Lee, Ch. J. in giving judgment, said, that after the right is settled, the presentment is ministerial only; and observing on the case of the King and Christchurch, stated, that there the presentment was grounded on an election previous; and in the case then before the court, it was grounded on the conveyances precedent; and the case of Clithero, before stated, was relied on.

Superadded
qualifications.

Richmond, 9th March, 1727. The right of election being in dispute, the House determined it to be in such persons only as are owners of ancient burgages in the borough, having right of pasture in a common field called Whytcliffe Pasture.

21. Journ.
p. 78.

OF FREEHOLDERS.

In the Oakhampton case, it was asserted by the counsel for the sitting members, that in *one eighth* of

1. Frazer,
p. 136.

Number of
freehold
boroughs.

of the boroughs in the kingdom, freeholds gave the right of voting. The following list may be of use; but the reader must understand that its accuracy is not vouched for.

Bristol.

Callington. (*a*)

Corff Castle.

Cricklade, and by statute 22d Geo. III.

c. 31.

5. Dorchester, - - 17th May, and 18th
March, 1720.

Fowey, - - - 5th March, 1770.

Gatton, - - - 26th March, 1628.

Guildford, - - - 24th April, 1689.

Haslemere, - - - 20th May, 1661.

10. Litchfield, - - - 10th Decem. 1718.

Ludgershall, - - - 11th February, 1698.

New Shoreham, by statute 11 Geo. III.

c. 55.

Norwich, - - - 12th March, 1701.

Nottingham.

15. Oakhampton, - - 24th February, 1710.

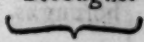
Ryegate.

St. Mitchell, - - - 20th March, 1700.

Tavistock, - - - 19th January, 1702.

(*a*) Whether this borough ought to be placed here is very doubtful.

Wareham,

Wareham, - - -	19th January, 1747.	Number of freehold boroughs. 
20. Weymouth and Mel- combe Regis, -	27th May, 1714. (a)	
21. Whitchurch, - -	21st December, 1708.	

Haverford West, perhaps ought to have been inserted in this list, but from the following entries in the Journals, it may be doubted whether the freeholders have a right to vote. 4th April, 1662, the report now made was recommitted, and 23d May, 1663, the committee reported their opinion, that the burgeses and inhabitants of the town, and the inhabitants which pay scot and lot, have voices in the election. It does not appear that any resolution to this effect was reported, and the House disagreed to their resolution that Sir William Moreton was duly elected, and ordered a new writ to be issued.

8. Journ.
P. 397.

Ib. p. 491.

Haverford West, 4th July, 1715. The right was agreed to be in the freeholders, burgeses, and

(a) These proceedings hardly amount to a last determination on the right, for the parties differed, but not materially, and at length submitted the right to be according to the determination of the House in the last controverted election, and there was no further contention on the point. The committee did not come to any general resolution on the right, but made several resolutions against split votes, and the practice of splitting in this borough, of which resolutions no notice was taken by the House.

inhabitants

Number of
freehold
boroughs.

inhabitants paying scot and lot, and not receiving alms.

See p. 273.
293.

It may be doubted, whether Ashburton ought not to be taken from the list of boroughs where tenants by burgage are entitled to vote; and placed here, for though it seems from the evidence produced in 1707 and 1710, that the right is confined to burgage tenements, or tenements paying a burgage rent, the determinations of the House describe the voters generally as *freeholders*, and the entirety of the tenements does not appear to have been insisted on.

Freeholders
only vote.

In the following boroughs, five only in number, the right of voting is supposed to be confined to freeholders, viz.

pa. 248.

Haslemere, the last determination, 20th May, 1661, and the explanatory resolution in 1775, have been stated already.

20. Journ.
P. 23.

Ryegate, 18th October, 1722. Humphry Parsons and Richard Mead, Esq. stated in their petition against the election of Sir Joseph Jekyll, and James Cocks, Esq. that "the petitioners were duly elected by a considerable number of the fair and honest freeholders, in whom the right of electing members doth lie."

3. Journ.
P. 3.

Tavistock, 27th April, 1660. A double return by the portreeve under the common seal, and by the *burgesses* in the name of themselves

and the portreeve. 23d May, 1660. The committee reported, that the question was, whether the freeholders alone, or the freeholders and inhabitants, had a right to vote; the opinion of the committee was in favour of the latter, and the candidate returned by the portreeve seated. The House agreed.

Freeholders
only vote.

8. Journ.
p. 42.

Tavistock, 16th May, 1661. The mayor and *burgesses* made one return, the portreeve another. 17th December, 1661, the committee reported the question to have been, whether the freeholders generally, or freeholders of inheritance only, had voices. The committee decided in favour of the latter, and that the candidate returned by the portreeve was duly elected. The House agreed that he was duly elected (108 to 85).

8. Journ.
p. 251.

Ib. p. 334.

Tavistock, 8th December, 1691. The right was agreed to be in the freeholders of inheritance, inhabiting within the said borough.

10. Journ.
p. 576.

Tavistock, 29th November, 1695. The petition stated that the petitioner was duly elected by the major part of the *burgesses*, who had a right to elect. 13th March, 1695, the committee reported, and the House agreed, the right to be "in the freeholders of inheritance inhabiting within the said borough."

11. Journ.
p. 341.

Ib. p. 510.

Tavistock, 4th February, 1696. The committee reported, and the House agreed, the right to be "in the freeholders of inheritance in pos-

Ib. p. 690.

Freeholders
only vote.

14. Journ.
p. 121.

8. Journ. p.
251.

Ib. p. 271.

25. Journ.
p. 480.

“ session, inhabiting within the said borough, who
“ have been or shall be presented as such by the
“ jury of enquiry of the said borough;” but
19th January, 1702, the committee having re-
peated the same resolution concerning the right,
it was moved to omit the words “ who have
“ been or shall be presented as such by the jury
“ of enquiry of the said borough,” and carried;
and the House resolved, that the right “ is in
“ the freeholders in possession, inhabiting within
“ the said borough.”

Wareham, 16th May, 1661. A double re-
turn; one was made by the *burgesses*. 15th June,
1661, the first question was, whether the right
was in the mayor, magistrates, and freeholders, or
by them and all that paid scot and lot, and the
committee were of opinion, that all that paid
scot and lot had votes. The second question was,
whether the sitting member was duly elected;
and to this latter question, which only was re-
ported, the House agreed.

Wareham, 19th January, 1747. The House
resolved, that the right of election “ is only in
“ the mayor and magistrates of the said borough
“ as pay scot and lot, and in the freeholders of
“ lands or tenements there, who have been *bona*
“ *fide*, to their own use, in the actual occupation,
“ or in the receipts of the rents and profits of
“ such lands and tenements, for the space of one
“ whole

“ whole year next before the election, except
“ the same came to such freeholders by descent,
“ devise, marriage, marriage settlement, or pro-
“ motion of some benefice in the church.”

Freeholders
only vote.

Whitchurch, 10th November, 1702. The
right was agreed to be in the burgage tenants,
in those that had a burgage house, or one acre of
burgage land, for life, either in their own right,
or in the right of their wives.

14. Journ.
P. 25.

Whitchurch, 21st December, 1708. The right
was resolved to be “ in the freeholders only
“ of lands or tenements, in right of themselves or
“ their wives, not split since the act of the seventh
“ and eight years of the reign of King William.”

16. Journ.
P. 52.

In the city of Litchfield and the three following
boroughs, tenants of some other description are
presumed to have a concurrent right of voting
with freeholders.

Freeholders
and other te-
nants vote.

Litchfield, 10th May, 1701, and 10th De-
cember, 1718, have been stated before.

P. 300.

Corff Castle, 6th April, 1699. The com-
mittee reported, that the right appeared to be “ in
“ lessees for years paying scot and lot, and also
“ in such persons as had the freehold in rever-
“ sion, upon such lease for years.”

12. Journ.
pa. 637.

2d March, 1699. It was “ agreed to be in
“ such as have an estate of inheritance or freehold,

13. Journ.
p. 248.

Freeholders
and other te-
nants vote.

19. Journ.

p. 63.

“ or a lease for years determinable upon life or
“ lives, paying scot and lot.”

21st January, 1718. The committee report-
ed that it was agreed to be in such persons as
are seised in fee, in possession, or reversion of
any messuage, tenement, or corporal heredita-
ment, within this borough, and in such persons
as are tenants for life or lives, and for want of
such freeholds, in tenants for years determinable
on any life or lives, paying scot and lot, and in
no others.

10. Journ.

p. 72.

Cricklade, 1st April, 1689. “ It was agreed by
“ the counsel on both sides, that the right of elec-
“ tion was in the *freeholders and copyholders of the*
“ *borough houses*, and leaseholders for any term
“ not under three years. Only the counsel for
“ Mr. Webb (the sitting member) alledged
“ they ought to be possessed of an estate in their
“ own right, and not in the right of their
“ wives.”

11. Journ.

p. 461.

22d February, 1695-6. That “ it was agreed,
“ that the right of election was in the freeholders,
“ copyholders, and leaseholders for not less
“ than three years.”

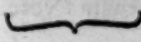
4 Dougl.

p. 3.

In 1776, it was agreed before a select com-
mittee, that the right of election was confined to
houses; and the first question was, whether seven
houses were within the boundaries of the borough;
the

the second question was, whether *new* houses gave the right, or only ancient ones, or new houses built on ancient scites. Evidence was produced on both sides, and for the petitioner it was argued, that this was not a burgage tenure borough, and unless it was, the idea of ancient scites and ancient houses must be abandoned. If it had been, the number of scites and houses to which the right of voting is annexed would be fixed and certain, and not have varied as it had done at different periods of time. The counsel for the sitting member said, that though all boroughs, where the right of voting is annexed to houses, were probably burgage tenure boroughs, yet alterations had by degrees crept into many of them, particularly Cricklade; that allowing leaseholders to vote is contrary to the nature of these boroughs. In 1689, however, this borough retained in a great measure its ancient right, for *borough houses* must mean ancient borough houses existing at the time of the agreement; that as the right was agreed to be in houses only, the number of voters must naturally be different at different times. The counsel for the petitioners in reply said, this was allowed not to be a burgage tenure borough, and *borough houses* must mean houses within the borough, and those words were left out of the agreement in 1695-6; that the right of the

Freeholders
and other
tenants vote.



Freeholders
and other
tenants vote.

leaseholders rested on usage. The third question was, whether the leaseholders, to entitle them to vote, must have leases for three or more years certain, from lessors who had absolute estates for three or more years certain, and not determinable on lives. And the fourth question was, whether residence for forty days was necessary to qualify freeholders and copyholders as well as leaseholders (who it was admitted must be resident for forty days); and whether it was necessary that every voter should have a legal settlement as a parishioner. After hearing the evidence and arguments on both sides, the committee resolved, "that it is the opinion of
" this committee, that the right of voting for
" members to serve in parliament for the bo-
" rough of Cricklade, in the county of Wilts,
" is in the inhabitants possessing houses within
" the said borough, who are freeholders, copy-
" holders, or leaseholders for any term not
" less three years, or for any such term, or
" greater term, determinable on life or lives, such
" freeholder, copyholder, or leaseholder hav-
" ing been in the occupation of the house for
" which he may claim to vote forty days pre-
" ceding any election."

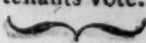
2. Lud.
1. 325.

In 1782, Paul Benfield and John Macpherson, Esqrs. were returned, and Samuel Petrie, Esq. petitioned. The select committee resolved Mr.


Benfield

Benfield to be duly elected, and Mr. Macpherson's election to be void for bribery, which appeared to the committee to be so flagrant, and so generally practised in this borough, that they thought it their duty to make a special report to the House. In consequence, the act of 22 Geo. III. c. 31. was passed, for the preventing of bribery and corruption in the election of members to serve in parliament for this borough, which reciting that, "whereas
"there was the most notorious bribery and
"corruption at the last election of burgessees
"to serve in parliament for the borough of
"Cricklade, in the county of Wilts; and
"whereas such bribery and corruption is likely to continue and be practised in the said
"borough in future, unless some means are
"taken to prevent the same; in order therefore
"to prevent such unlawful practices for the
"future, and that the said borough may from
"henceforth be duly represented in parliament," enacted, &c. "that from henceforth it shall and may be lawful to and for
"every freeholder being above the age of
"twenty-one years, who shall have within the
"hundreds or divisions of Highworth, Cricklade, Staple, Kingsbridge, and Malmesbury,
"or one or more of them, in the county of
"Wilts, a freehold of the clear yearly value

Freeholders
and other
tenants vote.



Freeholders
and other te-
nants vote.



“ of forty shillings, to give his vote at every
“ election of a burghers or burghesses to serve in
“ parliament for the said borough of Cricklade.

2. “ And be it further enacted by the au-
“ thority aforesaid, that the right of election of
“ member or members to serve in parliament,
“ for the said borough of Cricklade, shall be
“ and is hereby declared to be in such free-
“ holders as aforesaid, and in the persons who,
“ by the custom and usage of the said borough,
“ have or shall hereafter have a right to vote at
“ such election, and the proper officer for the time
“ being, to whom the return of every writ or
“ process do so belong, is hereby required to
“ return the person or persons to serve in par-
“ liament for the said borough, who shall have
“ the major number of votes of such freeholders
“ and other persons having a right to vote at
“ such election, any law or usage to the contrary
“ notwithstanding.

3. “ Provided always, that such freeholders
“ only shall be entitled to vote, as shall be duly
“ qualified to vote at elections for knight of the
“ shire for the county of Wilts, according to the
“ laws now in being for regulating county
“ elections.

4. “ And be it further enacted by the authority
“ aforesaid, that every such freeholder, before he
“ is admitted to poll at any election for the said
“ borough,

“ borough, shall, if required by the candidates,
“ or any of them, or any other person having
“ a right to vote at the said election, first take
“ the oath, or being one of the people called
“ Quakers, the solemn affirmation following,
“ *videlicet* :

**Freeholders
and other
tenants vote.**

“ I do swear (or being a Quaker, solemnly
“ affirm) that I am a freeholder in the hun-
“ dreds or divisions of Highworth, Crick-
“ lade, Staple, Malmsbury, and Kings-
“ bridge, or any one or more of them,
“ in the county of Wilts, and have a
“ freehold estate, consisting of
“ (specifying the nature thereof, and if it
“ consists in messuages, lands, tenements,
“ or tithes, in whose occupation the same
“ are, and if in rent, the names of the
“ owners or possessors of the tenements
“ out of which such rent is issuing, or
“ of some of them) situate, lying, or be-
“ ing at _____ in the afore-
“ said hundreds or divisions, or in one or
“ more of them, of the yearly value of
“ forty shillings, over and above all rents
“ and charges payable out of or in respect
“ of the same; and that I have been in
“ the actual possession or receipt of the
“ rents and profits thereof, for my own
“ use.

Freeholders
and other
tenants vote.

“ use, above twelve calendar months (or
“ that the same came to me within the
“ time aforesaid, by descent, marriage,
“ marriage settlement, devise, or pro-
“ motion to a benefice in the church, or
“ by promotion to an office); and that
“ such freehold estate has not been grant-
“ ed or made to me fraudulently, on
“ purpose to qualify me to give my vote;
“ and that the place of my abode is at
“ in ; and that I am
“ twenty-one years of age, as I believe;
“ and that I have not been polled at this
“ election.

“ Which oath or solemn affirmation the pro-
“ per officer to whom the return of any writ
“ or precept for such election shall belong, is
“ hereby required to administer. And in case
“ any freeholder or other person taking the
“ said oath or affirmation hereby appointed,
“ shall thereby commit wilful perjury, and be
“ thereof convicted, or if any person shall un-
“ lawfully and corruptly procure or suborn any
“ freeholder or other person to take the said
“ oath or affirmation, in order to be polled,
“ whereby he shall commit such wilful perjury,
“ and shall be thereof convicted, he and they,
“ for every such offence respectively, shall incur
“ such

“ such penalties as are inflicted on persons guilty
“ of perjury, or subornation of perjury, in and
“ by two acts of parliament, one made in the
“ fifth year of the reign of Queen Elizabeth, inti-
“ tuled, an act for punishing such persons as shall
“ procure or commit wilful perjury, or suborn
“ or procure any person to commit any wilful
“ or corrupt perjury, and the other, made in the
“ second year of the reign of his late Majesty
“ King George the second, intituled, An act for
“ the more effectual preventing and further
“ punishment of forgery, perjury, and subornation
“ of perjury, and to make it felony to steal bonds,
“ notes, or other securities for payment of money,
“ contrary to the said acts.”

Freeholders
and other
tenants vote.

In 1784, the counsel for the sitting members proposed to prove, that it was the usage of the borough to admit persons to vote as leaseholders, who had been forty days in possession of the houses for which they voted, although they might have had their leases a shorter time before the poll. This was objected to, first, because the resolution of the committee in 1776 was in effect a determination of the right, and to be adhered to as the decision of a court of justice upon the point in issue; and from the minutes it appeared the same question was then agitated; 2dly, that the words of the resolution, if not an express decision on the point, necessarily implied it; 3dly, such custom,

2. Lud.
P. 352.

Freeholders
and other
tenants vote.

custom, if proved, would be illegal, for occasionality was a fraud on the law of parliament. The evidence was supported by arguing, 1st, that the determination in 1776, so far as related to the point now in question, was extrajudicial, and there was no argument or dispute whether leaseholders should have resided forty days, the question there being, whether residence was necessary for freeholders and copyholders; 2dly, that the latter part of that determination ought not to be construed to mean, that the lease should have covered the whole occupation of forty days, for suppose a copyholder were to become a freeholder twenty days before an election, &c. 3dly, that such an usage was not illegal, for the general fraud was not to be presumed, but occasionality might be objected to any particular cases which might be found open to it, and there might be cases in which a lease made within the forty days might not be occasional. The committee resolved,

“ that it is the opinion of this committee, that
 “ the right of voting for members to serve in
 “ parliament for the borough of Cricklade, in
 “ the county of Wilts, is in the inhabitants possessing houses within the said borough, who
 “ are freeholders, copyholders, or leaseholders
 “ for any term not less than three years, or for
 “ any such term, or greater term, determinable
 “ on life or lives; such freeholder, copyholder,
 “ or

“ or leaseholder, having been as freeholder, copyholder, or leaseholder, in the occupation of the house for which he may claim to vote forty days preceding any election, and in the freeholders of the several hundreds, as directed by the statute 22 Geo. III. c. 31.”

Freeholders
and other
tenants vote.

Ludgershall, 23d May, 1660. The committee reported that the question was, whether the freeholders alone, or the freeholders and inhabitants, had the right; and that they were of opinion that the freeholders and inhabitants had the right. The House agreed. 11th Feb. 1698. The committee had resolved the right to be in the freeholders and inhabitants not receiving alms; the House amended the resolution, by leaving out all the material part, and then *agreed with the committee in the resolution so amended*. It was made to run thus, that the right “ is in such persons who have any estate of inheritance of freehold, or leasehold determinable upon life or lives, within the borough.” The resolution respecting this borough, in 1791, has been reported before.

8. Journ.
p. 42.

12. Journ.
p. 498.
See p. 237.

P. 237.

In the following boroughs, the right is supposed to be in residents of some description, and freeholders.

Freeholders
and residents
vote.

Callington, concerning which there is no last determination, and Willis says, that the right is in the inhabitants who have been three years housekeepers.

Not. Parl.
vol. 3. p. 13.

Dorchester,

Freeholders
and tenants
vote.

11. Journ.
p. 366.
p. 227. 228.

1. Journ.
p. 875.

p. 179.

11. Journ.
p. 625.

Dorchester, 3d April, 1690. A petition states the right of voting to be in the inhabitants residing there, paying scot and lot. The proceedings of 18th Mar. 1720, of 1775, and 1791, have been stated before.

Gatton, 26th March, 1628. This entry of the report of the committee is so very imperfect in the Journal, that it is difficult to decipher it, but it may be collected, that the committee thought the inhabitants, and also those who had lands in their own manurance, though they dwelt out of the borough, had a right to vote.

Gatton, 3d Nov. 1641, has been stated already, and may be seen also in the 1st vol. p. 173.

Gatton, 15th Dec. 1696. The petitioner insisted the right was "in the inhabitants not receiving alms, and in the freeholders having such freehold in their own occupation." For the sitting member it was insisted to be "in the freeholders of the borough, and the inhabitants paying scot and lot." The committee heard evidence on both sides, but came to no resolution on the right of election, and decided the sitting member to be duly elected, to which the House agreed.

The constitution of the borough of St. Mitchell is this. It never was incorporated, but there is a superior

superior or high lord, and five mesne or deputy lords, who hold of him: the portreeve, who presides, is one of the deputy lords, annually chosen to that office at the court-leet of the high lord. The high lord is not entitled to vote.

Freeholders
and tenants
vote.

St. Mitchell, 24th April, 1640. One question seems to have been, whether the burghers had the right of election, or the burghers and the inhabitants; but Mr. Courtney and Mr. Chadwell were declared duly elected by the committee, having the major part of the burghers, and all the inhabitants did condescend to their election. The rejected candidates appear to have been elected by *twenty-four*.

2. Journ.
p. 10.

St. Mitchell, 18th July, 1660. The question was between the commonalty at large, or twenty-four persons (probably those just mentioned) who claimed by custom, viz. two elizors, nominated by the lord of the manor, and twenty-two of the freemen chosen by the said elizors. The committee was of opinion the right was in the twenty-four, but only reported the member, whose seat depended on their right, to be duly elected, and the House agreed.

8. Journ.
p. 92.

St. Mitchell, 12th Dec. 1689. The committee resolved the right "is in the lords of the said borough, who are liable to be chosen portreeves of the same, and in the householders of
" the

10. Journ.
p. 306.

Freeholders
and tenants
vote.

13. Journ. p.
416.

1b. p. 513.

32. Journ.
p. 749.

33. Journ.
p. 357.

16. Journ.
p. 13.

1b. p. 212.

Not. Parl.
vol. 3. p. 57.

“ the same not receiving alms,” and the House agreed.

St. Mitchell, 20th Mar. 1700. The House resolved the right to be “ *in the portreeve* and “ lords of the manor, who are capable of being “ portreeves, and the inhabitants of the said bo- “ rough paying scot and lot.”

Fowey, 5th May, 1701. The right was re- solved by the committee to be “ in the prince’s “ tenants, who are capable of being portreeves “ of the said borough, and in such inhabitants of “ the said borough only as pay scot and lot,” and the House agreed.

Fowey, 5th Mar. 1770. It was “ resolved “ by the committee (and agreed to by the “ House), to be in the prince’s tenants, capable “ of being portreeves of the borough of Fowey, “ and such tenants only as have been duly ad- “ mitted upon the court-rolls of the manor, and “ have done their fealty.”

New Shoreham, 26th Feb. 1700. Certain inhabitants petition and complain *their* free right of election had been invaded, and 25th Nov. 1700, certain inhabitants petition against a sitting member, who had treated, and 16th Nov. 1709, a similar petition from the same persons. Willis states the principal inhabitants to be the electors. The right of freeholders to interfere, depends upon the act of 11 Geo. III. c. 55. which reciting that

†

“ whereas

Freeholders
and tenants
vote.

“ Whereas a wicked and corrupt society, calling
“ itself the Christian Society, hath for several
“ years subsisted in the borough of New Shore-
“ ham, in the county of Suffex, and consisted of
“ a great majority of persons having right to
“ vote at elections of members to serve in parli-
“ ament for the said borough; and whereas it
“ appears that the chief end of the institution of
“ the said society was for the purpose of selling,
“ from time to time, the seat or seats in parlia-
“ ment for the said borough; and whereas John
“ Burnett,” &c. “ and others, were members of
“ the said society; in order therefore to prevent
“ such unlawful practices for the future, and that
“ the said borough from henceforth be duly re-
“ presented in parliament, be it enacted,” &c.
“ that the said John Burnett,” &c. “ and others,
“ shall be, and by virtue of the said act are from
“ henceforth incapacitated and disabled from
“ giving any vote at any election for the chusing
“ a member or members to serve in parliament.

2. “ And that from henceforth it shall and may
“ be lawful to and for every freeholder, being
“ above the age of twenty-one years, who shall
“ have, within the rape of Bramber, in the said
“ county of Suffex, a freehold of the clear
“ yearly value of forty shillings, to give his vote
“ at every election of a burghers or burghesses to

D d

“ serve

Freeholders
and tenants
vote.

“ serve in parliament for the said borough of
“ New Shoreham.

3. “ And that the right of election of a mem-
“ ber or members to serve in parliament for the
“ said borough of New Shoreham shall be and
“ is hereby declared to be in such freeholders as
“ aforesaid, and in the persons who by the custom
“ and usage of the said borough have or shall
“ hereafter have a right to vote at such elections,
“ those whose names are mentioned herein, and
“ incapacitated and disabled by this act, only ex-
“ cepted; and the constable or other proper offi-
“ cer for the time being, to whom the return of
“ such precept or writ does belong, is hereby
“ required to return the person or persons to
“ serve in parliament for the said borough, who
“ shall have the major number of votes of such
“ freeholders and other persons having a right
“ to vote at such election (except such persons
“ as are herein before excepted) any law or usage
“ to the contrary notwithstanding.

4. “ And be it further enacted by the au-
“ thority aforesaid, that every such freeholder,
“ before he is admitted to poll at any election
“ for the said borough, shall, if required by the
“ candidates, or any of them, or any other per-
“ son having a right to vote at the said election,
“ first take the oath (or being one of the people

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“ called

“ called Quakers, the solemn affirmation) following, viz.

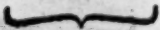
Freeholders
and tenants
vote.

“ You shall swear (or, being a Quaker,
“ solemnly affirm) that you are a free-
“ holder in the rape of Bramber, in the
“ county of Suffex, and have a freehold
“ estate consisting of (specifying
“ the nature thereof, and if it consists
“ in messuages, lands, or tithes, in whose
“ occupation the same are, and if in
“ rent, the names of the owners or pos-
“ sessors of the tenements out of which
“ such rent is issuing, or some of them)
“ lying or being at within
“ the rape of Bramber, in the county of
“ Suffex, of the clear yearly value of
“ forty shillings, over and above all rents
“ and charges payable out of or in re-
“ spect of the same; and that you have
“ been in the actual possession or receipt
“ of the rents and profits thereof, for
“ your own use, above twelve calendar
“ months (or that the same came to you,
“ within the time aforesaid, by descent,
“ marriage, marriage settlement, devise,
“ or promotion to a benefice in a church,
“ or by promotion to an office); and that
“ such freehold estate has not been

D d 2

“ granted

Freeholders
and tenants
vote.



“ granted or made to you fraudulently,
“ on purpose to qualify you to give your
“ vote ; and that the place of your abode
“ is at in and
“ that you are twenty-one years of age,
“ as you believe ; and that you have not
“ been polled before at this election.

“ Which oath or solemn affirmation, the con-
“ stable, or other proper officer to whom the
“ return of any writ or precept for such elec-
“ tion shall belong, is hereby required to ad-
“ minister ; and in case any freeholder or other
“ person taking the said oath or affirmation
“ hereby appointed, shall thereby commit wilful
“ perjury, and be thereof convicted, or if any
“ person shall unlawfully and corruptly procure
“ or suborn any freeholder or other person to
“ take the said oath or affirmation, in order to
“ be polled, whereby he shall commit such wil-
“ ful perjury, and shall be thereof convicted, he
“ and they, for every such offence respectively,
“ shall incur such penalties as are inflicted on
“ persons guilty of perjury or subornation of
“ perjury, in and by two acts of parliament, one
“ made in the fifth year of the reign of Queen
“ Elizabeth, (intituled, an act for punishing
“ such persons as shall procure or commit wilful
“ perjury, or suborn or procure any person to
“ commit

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“ commit wilful or corrupt perjury) and the
 “ other made in the second year of his late ma-
 “ jesty’s reign, (intituled, an act for the more
 “ effectual preventing and further punishment of
 “ forgery, perjury, and subornation of perjury,
 “ and to make it felony, to steal bonds, notes,
 “ or other securities for payment of money)
 “ contrary to the said acts.”

Freeholders
 and residents
 vote.

Corporators are supposed to have a con-
 current right with freeholders, in the following
 places.

Freeholders
 and corpora-
 tors vote.

Bristol, 6th Oct. 1666. The committee in-
 formed the House of two petitions, one here-
 tofore presented by the burgesses of the said city
 to the committee of elections, &c.

8. Journ.
 p. 631.

Bristol, 4th March, 1713. A petition, pre-
 sented by Sir William Daines, knight, stated,
 “ that the right of election is in the freeholders
 “ and freemen not receiving alms.”

17. Journ.
 p. 482.

Bristol, 1775. Mr. Douglas says, it seemed
 to be taken for granted on both sides, that
 the right of voting is in freeholders having free-
 holds of 40s. a year, and the free burgesses.

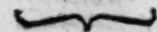
1. Dougl.
 p. 260.

Guildford. In the 39th year of the reign of
 Henry the VIth. the return was executed by
 several persons by name, “ *et multos alios bo-*
 “ *mines de burgo de Guildesford, infra burgum*
 “ *illum commorantes & residentes.*” 24th April,
 1689, the committee resolved, and the House

1. Carew,
 p. 255.

10. Journ.
 p. 101.

Freeholders
and corpora-
tors vote.



13. Jour.
p. 790.

agreed, that the right "is only in the freemen
"and freeholders of the said town, paying scot
"and lot, resiant in the same."

Norwich, 12th Mar. 1701. The right was
resolved by the committee (and agreed to by
the House) to be "in the freeholders, and such
"freemen only of the said city, as are entered
"in the books, and do not receive alms or
"charity."

13. Journ.
p. 611.

Nottingham, 10th June, 1701. The right
was agreed to be "in the mayor, freemen, and
"freeholders of 40s. a year.

1. Frazer.
p. 69.

Oakhampton had sent members to parliament
in the 7 Ed. II. (A. D. 1314.) but did not
exercise the privilege from that time till the year
1640. (a) In 21 Jac. I. (A. D. 1623) a cor-

1. Frazer,
p. 69.

(a) The restoration of this borough gave rise to a contest,
in the year 1791, as to who is the returning officer. See
the decision in favour of the mayor, p. 79. The obser-
vations made upon the subject of returning officers, at p. 46,
are strongly confirmed by that decision; for in all proba-
bility, before the borough was incorporated, the portreeve,
as the presiding officer there, made the returns; after it was
restored, that power devolved on the mayor, because he *then*
presided, and was exercised by him till 1780. The cor-
poration made a bye law immediately after the charter was
obtained, that the mayor for the time being should be pre-
sented to the homage to be chosen portreeve also during the
year of his mayoralty, and this junction, with only one ex-
ception, had taken place ever since,

poration

poration was created, consisting of a mayor, recorder, seven principal burgesſes, and eight aſſiſtants. On the 12th Dec. 1640, it appears by the Journals, that a petition of the mayor and burgesſes was referred to the committee of privileges, but the object of this petition is not ſtated. It is poſſible that it might pray that this borough (as ſome others had been a ſhort time before) ſhould be reſtored to its ancient privilege, for it is known, that in that year it returned members to parliament. On the 27th April, 1660, two returns were made, one by the mayor, the other by the *free burgesſes* without the mayor. On the 20th Dec. 1705, the right was “agreed to be in the freemen and freeholders of the borough;” and on 24th Feb. 1710, reſolved to be “in the freeholders and freemen, being made free according to the charter and bye laws of the ſaid borough.

Weymouth and Melcombe Regis, 27th May, 1685. A petition of the freeholders of theſe boroughs was preſented, touching an election. 17th Mar. 1710. The right was **not** conteſted, and through the proceedings was aſſumed by both parties to be in the freeholders. 27th May, 1714. It was admitted that the mayor, aldermen, bailiffs, capital burgesſes, and freeholders, were entitled to vote, and the only diſpute on the right was, whether the *recorder, burgesſes, and*

Freeholders
and corpora-
tors vote.

3. Willis.

Not. Parl

P. 15.

2. Journ.

P. 49.

8. Journ.

P. 3.

15. Journ.

P. 72.

16. Journ.

9. Journ.

P. 719.

16. Journ.

p. 558.

17. Journ.

p. 645.

Freeholders
and corpora-
tors vote.

town clerk, were also entitled; but both sides submitted the right to be according to the determination of the House in the last controverted election.

21. Journ.
P. 574.

Weymouth and Melcombe Regis, 7th May, 1736. The right was "agreed to be in the
"mayor, aldermen, bailiffs, and capital burgesses,
"inhabiting within the borough, and in persons
"seised of freeholds within the borough, and not
"receiving alms."

See p. 300.

To these may be added the city of Litchfield, where the right of voting is extended to freeholders, burgage tenants, and corporators. This is the only place in which freeholders have a concurrent right with burgage tenants, which may be accounted for, by supposing that the prevailing tenure was originally burgage, but that there were intermixed tenements held in socage, not of the lord of the borough, but of other lords; or if the intirety of burgages is assumed to be necessary in order to carry votes, then it may have happened, that some of them retain, or some of their parts, after being split, have usurped the privilege, though the identity of the tenement cannot be made out, or its original contents shewn,

Origin of
freehold
rights.

Consistently with the hypothesis, that burgage tenure is the source of representation in all the ancient boroughs of the kingdom, it is not
difficult

Origin
of freehold
rights.

difficult to account for freeholders in some places having now a right to vote. We may suppose, that in those places where freeholders alone have now the right, it was formerly vested in the freehold burgage tenants. Having no competitors at elections, the only inquiry about the qualification of voters could be, not into the nature of their tenure but of their interest. It must be *burgage*, because there was then no other; but it might be less than freehold; hence the name of *freeholder* would become the designation of the voter, and be adopted in the resolutions of committees and of the House. The fact confirms this conjecture. In the case of Haslemere, one of the five before-mentioned boroughs, in which freeholders have now the exclusive right of voting, the resolution of the House in 1661, and the agreement of candidates in 1680, did not prevent its being distinctly admitted, at the trial of the case of Onslow and Rapley, that the freeholds which gave votes were held by burgage tenure; and in the case of Whitchurch, another of these boroughs, there was (10th Nov. 1702) an agreement, that the right of voting was exclusively confined to burgage tenants; at Tavistock also, it is supposed, were burgage tenants; so in Ashburton, as beforementioned, the right is vested in freeholders, who, it appears, must hold in burgage; but whether it is necessary that each tenement should be entire and undivided, in order

to

Origin
of freehold
rights.

to give a vote, is not stated in the Journals. If it is not, we have here another instance of burgage tenants voting for divisions of burgages made within time of memory, and of another borough, in which burgage tenure exists, deprived of its supposed distinguishing characteristic.

Where tenants of other descriptions are admitted to vote with freeholders, we may suspect that the whole of the borough was not originally held of the lord by burgage tenure, but that there were within its limits portions of land held of distant manors, as at Litchfield, where burgage tenants vote along with freeholders, and corporators have the right of voting. At Cricklade, we know from Domesday Book, that a great part of the borough belonged to the neighbouring manors, and the introduction of freeholders might be owing to that circumstance; and at Ludgershall there are evident traces of its having been formerly a burgage tenure borough.

Where resiants or corporators have a concurrent right with freeholders, it is probable that the freeholders were originally burgage tenants, and that the resiants or corporators have usurped upon their rights, as has been in part explained already, and will be more fully discussed hereafter; and among several of these boroughs, strong vestiges still remain of a prevailing burgage tenure,

tenure, as at Callington, Gatton, St. Mitchell's, Bristol, &c. The right of voting at Oakhampton is deserving of particular notice, and the introduction of freemen as a distinct class of electors, though easily accounted for, it might be difficult to support by any legal argument. In the reigns of Edward the 1st and Edward the 2d, there was no charter, and we must presume the right of voting was vested in the freeholders only. When the borough was restored in 1640, the freemen were admitted, without dispute or difficulty, to join in elections, (though the charter was then only seventeen years old) and their right finally established by a last determination in 1710. That the freeholders were anciently burgage tenants appears evidently from the case of this borough in 1791, reported by Mr. Frazer; and by one of the counsel it was said, "that the portreeve of Oakhampton, as appears by the ancient grants or charters, is to be chosen by the *burgesses* of the burgh, paying certain rents *for their burgages*."

The borough of St. Mitchell affords an extraordinary, but perhaps not a singular instance of a select body of landholders having been permitted to enjoy the right of voting, and having a decision of the committee, and the sanction of the House, in favour of it. It evinces the strong aristocratic spirit of the feudal system,
under

Origin
of freehold
rights.

1. Frazer,
p. 100.

Origin
of freehold
rights.

under which the lord of the manor had introduced a custom, which in fact disfranchised all the tenants except twenty-four of his immediate dependents.

Of the tenure
of freehold-
ers.

See vol. 1.
chap. 2.

Whether the tenure of freeholders, who are electors for boroughs, is to be deemed common socage or burgage, makes no difference in our subsequent inquiries; for the reader will recollect, that the freeholders now treating of have already been described as persons whose votes are not confined (like those mentioned in the former part of this chapter) to entire undivided tenements, now in the same state as they were in before the time of legal memory; therefore with regard to the *tenure* by which they hold their respective estates, and the *interest* they have in them, they differ not from the electors for counties.

Of the in-
terest of free-
holders. See
vol. 1. chap. 3.

Of the an-
nual value of
freeholds.

See vol. 1.
p. 17, 23, and
chap. 4.

Before the statute of 8 Hen. VI. c. 7. was passed, there was no limitation of the annual value of the freeholds which were to entitle their owners to vote. Both in boroughs and counties, freeholders enjoying lands of any value, however minute, had a right to the franchise, or (as it was generally esteemed at that time, from the consequences which followed it) were liable to the burden. The last mentioned statute altered the law

law respecting counties, restraining the qualification of voters there to freeholds "to the value of "40 s. by the year at the least above reprises."

Of the annual value of freeholds.

But the right of voting remained in boroughs exactly as before, and Litchfield and Nottingham are the only instances I have met with in which the annual value of the tenement has been made, at the common law, part of the qualification of a freeholder to vote at a borough election. The statutes of 11 Geo. III. c. 55. and 22 Geo. III. c. 31. before recited, have introduced into New Shoreham and Cricklade, as voters, freeholders in possession of tenements of the annual value of 40s. and it remains to notice certain acts of parliament which have changed the constitution of some of the cities and towns being counties of themselves.

It does not seem that any distinction was made between freeholders voting for cities and boroughs, and for cities and boroughs being counties of themselves, till the 13 Geo. II. c. 20. whereby the first and second sections of the act of the 10 Ann. c. 23. and the whole of the 12 Ann. st. 1. c. 5. (both which related only to electors for counties) were extended to the electors for certain cities and towns being counties of themselves. There is a variance between the preamble and enacting parts of the 13 Geo. II. c. 20. which ought to be noticed; for after reciting so much as was necessary of the above-

Of the annual value of freeholds.

abovementioned acts, it goes on, "and whereas
 "it is reasonable that provision should likewise
 "be made to prevent any fraudulent convey-
 "ances of lands and tenements, in order to mul-
 "tiply votes for electing members to serve in
 "parliament for such cities and towns as are
 "counties of themselves, wherein persons have
 "a right to vote for electing such members *for*
 "*or in respect of lands, tenements, or hereditaments*
 "*of the yearly value of forty shillings.*" The enact-
 ing part extends the provisions recited to such
 lands or tenements for which any person shall
 vote for the election of any member for any city
 or town being a county of itself, and then pro-
 vides, that "if any person shall vote for the elec-
 "tion of any such member as a freeholder, *not*
 "*having such an estate for one year before the*
 "*same election, or so charged or assessed as in*
 "*the said acts, or one of them, is described,* except
 "in cases therein excepted;" he shall be subject
 to the penalties inflicted by the 10 Anne, by
 which act voters for counties were required to
 have received, or to have been entitled to receive
 the rents or profits of their freeholds, to the full
 value of 40 s. or more, to their own use, for one
 year previous to the election, except in certain
 cases, and to have been assessed for the same in
 the same proportions as other freeholds of the
 value of 40 s. Here, according to the profession
 in the preamble, the act was to relate only to
 those

those cities and towns, being counties of themselves, where the right of voting was *already* confined to freeholders of 40*s.* a year, but the enacting part applies the recited laws to all freeholders, and inflicts a penalty on every person not having an estate of that value, who should presume to vote. On how many cities and towns this act might operate may not be easy to ascertain distinctly. I make out only Bristol and Norwich, where it introduced a new qualification, and Litchfield and Nottingham, where it established an old one.

Of the annual value of freeholds.

The 19 Geo. II. c. 28. after reciting that
 “ whereas by an act made and past in the last
 “ session of parliament, intituled, An act to explain and amend the laws touching the elections
 “ of knights of the shire to serve in parliament
 “ for that part of Great Britain called England,
 “ several good provisions were enacted for the
 “ better regulating the said elections; and
 “ whereas it is reasonable that like provision
 “ should be made for the due election of members to serve in parliament for such cities and
 “ towns in that part of Great Britain called England as are counties of themselves, and in
 “ which persons have a right to vote for electing
 “ such members, for and in respect of freehold lands, tenements, or hereditaments of
 “ the yearly value of forty shillings,” enacted,
 “ that

18. Geo. II.
 c. 18.

Of the annual value of freeholds.

“ that from and after the twenty-fourth day of
 “ June one thousand seven hundred and forty-
 “ six, every person demanding to vote for the
 “ election of any members to serve in parliament
 “ for such city or town being a county of itself,
 “ in that part of Great Britain called England,
 “ for and in respect of any freehold estate of
 “ forty shillings a year, shall, before he is admit-
 “ ted to poll at the said election (if required by
 “ the candidates, or any of them, or any person
 “ having a right to vote at the said election) first
 “ take the oath (or being a Quaker, the solemn
 “ affirmation) following, viz.

“ You shall swear (or being a Quaker, you
 “ shall solemnly affirm) that you have a
 “ freehold estate, consisting of (specifying
 “ the nature of such freehold estate,
 “ whether messuage, land, rent, tythe, or
 “ what else, and if such freehold estate
 “ consists in messuages, lands, or tythes,
 “ then specifying in whose occupation
 “ the same are, and if rent, then speci-
 “ fying the names of the owners or pos-
 “ sessors of the lands or tenements out
 “ of which rent is issuing, or some one
 “ or more of them) lying or being in the
 “ city or county, or town or county (as
 “ the case may be) of *of*
 “ the clear yearly value of forty shillings,
 “ over

“ *over and above all rents and charges*
“ *payable out of or in respect of the same;*
“ and that you have been in the actual
“ possession or receipt of the rents and
“ profits thereof, for your own use, above
“ twelve calendar months, or that the
“ same came to you within the time
“ aforesaid by descent, marriage, mar-
“ riage settlement, devise, or promotion
“ to a benefice in a church, or by pro-
“ motion to an office; and that such
“ freehold estate has not been granted or
“ made to you fraudulently, on purpose
“ to qualify you to give your vote; and
“ that the place of your abode is at
“ in and that you
“ are twenty-one years of age as you
“ believe, and that you have not been
“ polled before at this election.

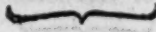
Of the
annual value
of freeholds.

“ Which oath (or solemn affirmation) the sheriff
“ or sheriffs, by him or themselves, or his or
“ their under sheriff or under sheriffs, or such
“ sworn clerk or clerks as shall be by him or them
“ appointed for the taking of the poll, is and are
“ hereby required to administer; and in case any
“ freeholder or other person taking the said oath
“ or affirmation hereby appointed, shall hereby
“ commit wilful perjury, and be thereof con-
“ victed, and if any person do unlawfully and
“ corruptly procure or suborn any freeholder or

E c

“ other

Of the
annual value
of freeholds.



“ other person to take the said oath or affirma-
“ tion, in order to be polled, whereby he shall
“ commit such wilful perjury, and shall be there-
“ of convicted, he and they, for every such of-
“ fence, shall incur such pains and penalties as
“ are directed to be inflicted for offences com-
“ mitted against” the 5 Eliz. c. 9. and 2 Geo. II.
c. 25.

4th. And it was further enacted, “ that from
“ and after the said twenty-fourth day of June,
“ one thousand seven hundred and forty-six, no
“ person shall vote in such election of a mem-
“ ber or members to serve in parliament for any
“ city or town, being a county of itself, and
“ in which persons have a right to vote for such
“ members, for in and respect of lands, tene-
“ ments, or hereditaments of the yearly value of
“ forty shillings, unless such persons shall have
“ a freehold estate in the city and county, or
“ town and county, for which he votes, of the
“ yearly value of forty shillings, over above all
“ rents and charges payable out of or in respect
“ of the same, and shall have been in the actual
“ possession, or in receipt of the rents and pro-
“ fits thereof, for his own use, above twelve ca-
“ lendar months, except the same come to him
“ within the time aforesaid, by descent, marriage,
“ marriage settlement, devise, or promotion to
“ any benefice in a church, or by promotion to
“ an

Of the
annual value
of freeholds.

“ an office, and no person shall vote in respect
“ or in right of any freehold estate which was
“ made or granted to him fraudulently, on purpose
“ to qualify him to give his vote, or shall vote
“ more than once at the same election; and if
“ any person shall vote in any such election,
“ contrary to the true intent and meaning hereof,
“ he shall forfeit to any candidate for whom
“ such vote shall have not been given, and
“ who shall first sue for the same, the sum of
“ forty pounds, to be recovered by him or them,
“ his or their executors or administrators, toge-
“ ther with full costs of suit, by action of debt
“ in any of his majesty’s courts of record at
“ Westminster, where no essoin, protection, wager
“ of law, privilege, or imparlance shall be ad-
“ mitted or allowed, and in every such action
“ the proof shall lie on such person against whom
“ the same was brought, unless the fact on which
“ such action is grounded be, the having polled
“ more than once at the same election.

5th. And it was declared, “ that no public or
“ parliamentary tax, church or parish rate or
“ duty, or any other tax, rate, or assessment
“ whatsoever, to be assessed or levied within such
“ cities or towns being counties of themselves as
“ aforesaid, is or shall be deemed or construed
“ to be any charge payable out of or in respect
“ of any freehold estate within the meaning and

Of the
annual value
of freeholds.

See p. 137.

“ intention of this act, or of the oath or solemn
“ affirmation hereinbefore directed to be admi-
“ nistered to, and taken by every freeholder, if
“ required, as aforesaid.”

This act is confined by sect. 13. to persons hav-
ing a right to vote for freeholds of the yearly value
of forty shillings; but as the 13 Geo. II. c. 20.
had required all freeholders voting for cities and
towns being counties of themselves to be so qua-
lified, it may be argued, that the annual value of
the voters tenements is now a material subject
for investigation at the poll in all such cities and
towns.

Splitting of
freeholds.
See p. 325.
See vol. I.
chap. 5.

The provisions made against fraudulent and
occasional votes for counties, apply in general to
votes for boroughs also.

The act of the 7th and 8th W. III. c. 25. f. 7.
relating to the splitting of freeholds, has been
stated already, and the cases of Whitchurch, 21st
December, 1708; Weymouth and Melcombe Re-
gis, 9th June, 1714; Petersfield, 9th May, 1727;
and Haslemere, in 1775, will be found in the
former volume. Since that was published, the
case of Oakhampton, 1792, has occurred.

1. Frazer, p.
102.

John St. Ledger and Robert Ladbroke, Esqrs.
had been returned by the mayor, John William
Anderson and John Townson, Esqrs. by the
portreeve, and both parties had petitioned. The
committee,

committee, before they entered on the merits of the election, decided in favour of the right of the mayor to act as returning officer, and of course St Ledger and Ladbroke were afterwards considered as the sitting members. The petitioners counsel objected to seventy-two voters, for occasionality. The Duke of Bedford and Earl Spencer have considerable property in this borough, and about three months before the election, at the latter end of March, and after a canvass had taken place, Lord Spencer made a variety of conveyances. The Duke of Bedford made others of a similar nature, in April, May, and June; and a gentleman of the name of Harris made some in the beginning of June. For some of these conveyances there was no consideration at all paid, for others the consideration was so small as to be totally inadequate. Some of them conveyed interest so minute, as hardly to be capable of description; as Samuel Cary and one Read had each separate grants from the Duke of Bedford, dated first and second June, 1790, *of one third of one sixteenth of one fourth* of a dwelling house, in consideration of 20*l.* at which rate the value of this single house must be 384*0l.* ! It was contended, that these votes came within the express words of the splitting act, and that these conveyances were manifestly occasional, and as occasional fraudulent, and so void both by the

Splitting of
freeholds.

1. Frazer,
p. 107. 141.

Splitting of
freeholds.

common law and that statute; and that no argument in their favour could be drawn from conveyances of burgage tenements, supposing the decisions upon that subject to stand unimpeached, because the tenure here is not burgage but freehold. It was admitted by the counsel for the sitting members, that some of the votes were bad, because split within the 7 and 8 W. III. but they contended that there would still remain a majority on their side. It was argued, that these conveyances conveyed the estates mentioned in them to the grantees, who might hold them against the grantors, and having the estate, they might exercise the right of voting. That occasionality is frequently allowed; as if a man purchases land in a particular county on purpose to gain a vote there, and is in possession for twelve months; or a pauper may refuse relief for a given time for the express purpose of keeping his vote, &c. So freemen having inchoate rights may take up their freedom at the eve of an election. It was insisted, that there is incontestible proof of this having been formerly a burgage tenure borough, and if the owners of the burgage property might have done in the reign of Edward the Second, as they have now done, they may do it now. That freeholds may by operation of law be so divided as greatly to increase the number of votes in a borough, as by descent among coparceners,

ceners, &c. and if many of these subdivisions happened to center in one person, they might be afterwards separated again, and dispersed. Hence what had been done here had not trespassed against the act of William the Third, when they merely restored to ancient tenements, or parts of ancient tenements split before that act, a right which had formerly belonged to them; and that evidence would be produced to prove that to have been the case with the tenements in question. That the act of William, only relates to the splitting of houses in order to give two votes for the same tenement; and committees had so ruled when they decided that it did not apply to burgages which are only one species of freehold property. The committee decided upon each of these seventy-two votes, and their opinion was, that every one of them was bad.

Splitting of
freeholds.

It is unnecessary to detail all the cases of individual voters here, but the following have been selected as most worthy of attention.

“ The Reverend Thomas Hole claimed to
“ vote for a newly erected messuage, formerly an
“ old stable conveyed to him by Benjamin Prest
“ and Susannah his wife, on the 25th March,
“ 1790. He said the consideration (fifty pounds)
“ was paid. The value of the estate was three
“ pounds *per annum*. Prest and his wife live on

i. Frazer,
p. 174.

Splitting of
freeholds.

“ the estate, but the witness did not know
 “ whether they were tenants to Hole or not.
 “ In the deed there was a covenant to levy a fine
 “ which was afterwards levied. The counsel
 “ for the sitting members dwelt upon the recency
 “ of the date, and contended, that however fair the
 “ transaction might be, the leading intention of the
 “ parties was to procure a vote for the grantee.
 “ This the counsel on the other side did not
 “ deny, but they asked if there was any thing
 “ reprehensible in a gentleman of fortune pur-
 “ chasing, a few months before an election, such
 “ a freehold as would entitle him to vote, pro-
 “ vided the purchase was fair and honest; and
 “ they contended, that if the transaction was of
 “ that nature, the committee ought to require
 “ strong proof before they should determine that
 “ it was entered into solely for election purposes.
 “ The deed was produced, and proved by a
 “ subscribing witness. The committee, however,
 “ determined the vote to be bad.

i. Frazer,
p. 175.

“ Robert Hawkes, junior, said, he voted for an
 “ undivided fifteenth of Battins, in the occupation
 “ of his father, conveyed to him by his father in
 “ January, 1789, in consideration of natural love
 “ and affection, and ten shillings. He said he
 “ had received an half year's rent of his father,
 “ who is surgeon and post-master, about five
 “ months before the election. The rent of this
 “ undivided

“ undivided share is sixteen shillings *per annum*,
“ and his father had it for fourteen years. One
“ moiety belongs to the Duke of Bedford, the
“ other to five different persons, each of whom
“ has one tenth of the whole, and a witness said
“ he had known the premises so holden as long
“ as he could remember.—The father purchased
“ the premises from one Russel, who voted in
“ right of the estate in the year 1780. The
“ consideration was twenty-one pounds. It was
“ said, that the father being himself disqualified,
“ had transferred the property to enable his son
“ to vote for him, and that the receipt of rent
“ after the canvass of the borough, when it must
“ have been due so long before, afforded a strong
“ presumption that the whole transaction was
“ merely colourable; to which it was answered,
“ that tenants generally pay one half year’s rent
“ under another, and that the property was
“ transferred so long as thirteen months before
“ the election. The lease and release from the
“ father to the son were produced, and proved
“ by a subscribing witness. Good.

“ Richard Holt, Esq. of South Tanton, said
“ he voted for a field, consisting of two acres,
“ the value of which is about £.6 a year. His
“ deeds were in possession of his attorney. He
“ purchased it six or eight months before the
“ election, and acknowledged that he knew
“ there

Splitting of
freeholds.

1. Fraser,
p. 176.

Splitting of
freeholds.

“ there was to be a contest in the borough. He
“ said he had paid £. 150. for the purchase, and
“ was known to be a gentleman of fortune.
“ A witness proved the value of the estate to be
“ as above, but the deed of conveyance was not
“ produced. Bad.”

The latter branch of the 7th section of the 7 and 8 W. III. c. 25. expressly says, that “ no more
“ than one single voice shall be admitted for one
“ and the same tenement ;” yet at Corff Castle, a right of voting prevails, in consequence of which both the landlord and tenant are allowed to vote for the same house or tenement.

Fraudulent
conveyances.
See vol. 1.
p. 108.

In order further to enforce the act of king William, the 10 Anne, c. 23. was made, “ for the
“ more effectual preventing fraudulent convey-
“ ances in order to multiply votes for electing
“ knights of shires to serve in parliament.” This act was never extended to cities and boroughs in general, but the first and second clauses were extended to certain cities and towns, being counties of themselves, by the 13 Geo. II. c. 20. as has been observed before. The last mentioned act was repealed in part by the 19 Geo. II. c. 28. s. 2. but not as to so much of it as extended the *first* section of the 10 Anne, c. 23. to those cities and towns, being counties of themselves. Consequently they and counties are, in this respect, exactly

actly on the same footing, and the reader may be referred to the first volume for the words of the clause.

Fraudulent conveyances.

See vol. 1.
p. 105.

By the 19 Geo. II. c. 28. s. 4. "no person shall vote in respect or in right of any freehold estate, which was made or granted to him *fraudulently*, on purpose to qualify him to give his vote," and the oath to be taken at elections, is framed to meet this clause; these provisions are copied from the 18 Geo. II. c. 18. s. 1. and s. 5. relating to voters for counties. A doubt may arise as to the effect and meaning of the word "fraudulently" in this clause, for it may be said, that if a conveyance made for the purpose of giving a vote, is in itself fraudulent, that word should have been omitted; and if to make such conveyance void by virtue of this act, fraud is a necessary ingredient to be proved, as well as the purpose for which it was made, the statute of William is a much more effectual defence against the multiplying of votes, for it renders the conveyance void on proof only of the purpose.

Occasional freeholders.

Perhaps the most effectual check which has yet been discovered upon the practice of making fraudulent votes to carry an election, has been the requisition that each voter shall have been in possession

In possession twelve months.

In possession
twelve
months.

See vol. 1.
p. 109.

session of his franchise for a given period of time before the election. This restriction was first introduced, and fixed for electors for counties at one year, by the 10 Anne, c. 23. s. 2. and extended to some electors for cities and towns being counties of themselves, by the 13 Geo. II. c. 20. It was afterwards re-enacted, as to electors for counties, by 18 Geo. II. c. 18. s. 5. and the 19 Geo. II. c. 28. s. 4. puts electors for cities and towns, being counties of themselves, voting in right of freeholds of the yearly value of 40s. exactly upon the same footing; but with respect to freeholders, entitled to vote at elections in cities and boroughs not being counties there is no limitation of time imposed; but they may vote in right of freeholds conveyed to them at any time, however short, before the election, provided their conveyances are made *bonâ fide*, and not fraudulently, on purpose to qualify them to vote.

16. Journ.
p. 481.

Great inconveniences have arisen from this deficiency in the law; and in the case of Wareham, 19th Jan. 1747, in the year after the 19 Geo. II. passed, we find the House adopting a resolution of the committee, by which the electors of that place have been put precisely in the same situation as electors for counties, and cities and towns being counties. The resolution was, that the right of election is only in the mayor and magistrates, and such of the inhabitants as pay

scot and lot, "and in the freeholders of lands
 "and tenements there, who have been *bonâ fide*,
 "to their own use, in actual possession, or in the
 "receipt of the rents and profits of such lands
 "and tenements for the space of one whole year
 "next before the election, except the same came
 "to such freeholders by descent, devise, mar-
 "riage, marriage settlement, or promotion to
 "some benefice in the church.

In possession
 twelve
 months.

This resolution, coupled with the motion for
 an instruction to the committee on the 13 Geo. II.
 c. 20. to receive a clause for a general restriction
 of this kind on all descriptions of voters for
 cities and boroughs, shews the extreme anxiety
 of those who wished well to the constitution of
 parliament, to check the fraudulent making of
 votes; (a) but at the same time the negating
 of

See p. 331.

(a) The extent to which these practices have been car-
 ried will appear, in some degree, from the following observa-
 tions made by the reporter of the case of Onslow and Rapley,
 at the conclusion of it. "The court had great reason to
 "shew an extraordinary abhorrency of such practices, for
 "that the mischief is grown almost general. To rectify and
 "punish which abuses the House of Commons, in every
 "parliament, are compelled to spend near half their time.
 "And such is the frowardness of evil-minded men, as neither
 "to forbear the practice, nor to acquiesce under the punish-
 "ment, but to cry out of too great a severity therein, when
 "it bears no proportion to the offence, nor indeed can, when
 "a man

1. Som.
 Tracts.
 P. 377.

In possession
twelve
months.

of the resolution in 1739, and the being obliged to do, by what was little less than an illegal resolution, in one instance only, what ought to have been done by an act of the legislature in all, shews the strength of the owners of this species of property in the legislative body. Since the Wareham case, similar restrictions have been laid on borough electors of all descriptions, except those who vote in respect of tenure. And for this distinction between freeholders in cities and boroughs, and those in counties, or cities and towns being counties, it would be difficult to assign a good reason; it cannot be, because they are less likely to be influenced by wealth or power.

Assessment.
See vol. I.
p. 112.

The 10 Anne, c. 23. and 12 Anne, st. 1. c. 5. made it necessary that the freeholds of voters for counties should be rated as of the value of 40s. a year, but by the 18 Geo. II. c. 18. the whole of the last of those acts, and part of the

“ a man shall duly consider and weigh the great and important trust left with and reposed in every parliament man, by his choice, who is thereby intrusted with life, religion, liberty, estate, and indeed all. And every one so chosen is a counsellor, as he is a member of the *commune concilium* of the nation; and although one be chosen for one particular county or borough, yet when he is returned, and sits in parliament, he serveth for the whole realm, and undue and contrived choices are injurious.”

former

former one were repealed, and a new system of rating introduced, without any reference whatever to the value of the premises. By the 13 Geo. II. c. 20. those statutes were made to take in certain cities and towns being counties in themselves; but so much of that act was repealed by the 19 Geo. II. c. 28. as related to the rating of freeholders voting there. The 19 Geo. II. c. 28. sets out with declaring its object to be, to make like provisions for elections in cities, in towns being counties of themselves, as were made for elections in counties, by virtue of the 18 Geo. II. c. 18. and in section 3d, “ provides, that from
“ and after the twenty-fourth day of June, one
“ thousand seven hundred and forty-six, no per-
“ son shall vote for the electing a member or
“ members to serve in parliament for such city
“ or town, being a county of itself as aforesaid,
“ within that part of Great Britain called Eng-
“ land, in respect or in right of any freehold
“ messuages, lands, or tenements, of the yearly
“ value of forty shillings as aforesaid, which have
“ not been charged or assessed towards some aid
“ granted or hereafter to be granted to his ma-
“ jesty, his heirs or successors, by a land tax in
“ Great Britain, twelve calendar months next
“ before such election. Provided that nothing
“ herein contained shall extend or be construed
“ to restrain any person from voting in any such
“ election

Assessment.

“ election for cities and towns as are counties of
 “ themselves as aforesaid, in respect or in right
 “ of any rents, or any messuages or seats be-
 “ longing to any offices, in regard or by reason
 “ that the same have not been usually charged
 “ or assessed to the aid commonly called the
 “ land tax, and the acting commissioners of the
 “ land tax for the time being, or any three or
 “ more of them, at their meetings, shall sign and
 “ seal one other duplicate of the copies of the
 “ assessment or assessments to be delivered to
 “ them by the assessors, after all appeals de-
 “ termined, and the same shall deliver or cause
 “ to be delivered to the persons officiating
 “ as clerks of the peace within the districts
 “ of the said cities and towns being counties of
 “ themselves as aforesaid respectively, to be by
 “ them kept amongst the records of the sessions,
 “ to which all persons may resort at all seasonable
 “ times, and inspect the same, paying six pence for
 “ such inspection; and the said persons officiating
 “ as clerks of the peace, or their deputies, are
 “ hereby required forthwith to give copies of the
 “ said duplicates, or any part thereof, to any per-
 “ son or persons who shall require the same, pay-
 “ ing after the rate of six pence for every three
 “ hundred words, and so in proportion for any
 “ greater or less number.”

Fraudulent

Fraudulent practices, to carry elections for cities and towns being counties of themselves, by means of grants of annuities and rent charges issuing out of freehold lands and tenements, have been put upon exactly the same footing as if carried on to procure elections for counties, by the act of 3 Geo. III. c. 24. The reader is therefore referred to the former volume, where that act is set out length.

Annuities
registered.

Vol. I. p. 145.

In various places the character of a freeholder alone is not sufficient to give the right of voting, but a collateral qualification is superadded. In the cases which have been cited, instances may be found, where freeholders were required to hold their freeholds in their own occupation, or to reside upon them; some must not only reside, but pay scot and lot; some need neither occupy nor reside, but must pay to church and poor; some must not receive alms; some must have been in possession forty days, others a year; some must be presented by a jury, or selected by the homage; some must be lords of a manor, or prince's tenants, capable of being portreeves, &c.

Superadded
qualifications.

OF LEASEHOLDERS.

At Corff Castle, tenants for years determinable on any life or lives; at Cricklade, leaseholders

Leaseholders
vote.
See p. 366.

Leaseholders
vote.

See p. 374.

See p. 237.

holders for any term not less than three years, or for any such term, or greater term, determinable on life or lives; at Ludgershall, such persons as have any estate of leasehold determinable upon life or lives, within the borough, have a right to vote.

It is observable, that in *all* these places (except Cricklade) the leaseholds are determinable on a life or lives; and this induces a suspicion, that the right was anciently confined to lessees having freehold interests in their tenements. At Cricklade only, leaseholders for terms of years, unconnected with lives, have the right of voting. In the early ages of the feudal system, leases for years were rarely granted, and therefore claims to vote at elections founded upon them must have been of comparatively modern introduction.

Fraudulent
votes.

The splitting act is the only statute which checks the making of fraudulent voters for leaseholds; in other respects they are left (as copyholders are) to the coercion of the common law.

Superadded
qualifications.

At Corff Castle, a leaseholder, in order to enjoy his franchise, must pay scot and lot, and at Cricklade, must have been in the occupation of the house for which he claims to vote for forty days preceding the election.

Of

OF COPYHOLDERS.

The only borough in which common copyholders present themselves, as enjoying the elective franchise, is Cricklade. The proceedings respecting that borough have been stated before very fully. On 1st April 1689, it was agreed, that the right of voting was in freeholders and copyholders of *burgage houses*; but in the agreement made 22d Feb. 1695-6, and in all the subsequent cases, nothing appears to distinguish these copyholders, from any other tenants of that description. If their right was originally connected with burgage tenure, as may be strongly suspected, the observations made on *copyholders by burgage* apply here. But if not, I cannot persuade myself to look upon their interference at elections in any other light than as an usurpation on the right of others, sanctioned by long enjoyment.

Copyholders
vote.

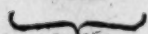
See p. 366.

See p. 282.

Copyholders in ancient demesne hold "according to the custom of the manor," but common copyholders hold "*at the will of the lord*, according to the custom of the manor." The predecessors (as we are taught to consider them) of copyholders were villeins, men of base and abject condition, little better than that of slaves. In most boroughs, probably, were some of these, holding lands of the lord, or of the bur-

See vol. I.
p. 27.

Copyholders
vote.



gesses, and it can hardly be conceived, that those who had villeins under them would condescend to invite them to a participation of franchises.

Titles of
copyholders.

Disputes about the titles of copyholders can seldom arise at the poll, for the production of the last admission will in most cases be decisive of the voters claim; and the splitting act (7 and 8 W. III. c. 25. s. 7.) contains the only restrictions imposed by statutes on this right of voting.

Fraudulent
votes.

Superadded
qualifications.

At Cricklade, a copyholder qualified to vote must have been in the occupation of the house for which he claims to vote forty days preceding the election.

ADDENDA.

A D D E N D A.

AFTER the case of Bedford, at p. 229. add,
The cases of the borough of Cricklade
will be stated hereafter.

See p. 366,
&c.

Fowey, 5th Mar. 1770. The counsel of the petitioners alledged, that the words "prince's tenants who are capable of being portreeves," in the resolution of the 5th May, 1701, were not meant to restrain prince's tenants from voting, and they offered to add fifty-two prince's tenants to the poll of the petitioners, who had tendered themselves to be admitted on the roll of the court baron of the manor (which was stated on the other side to be a necessary qualification to make them capable of being portreeves) and had been refused. For the sitting members it was insisted, that the prince's tenants, who have a right to vote at elections, are not prince's tenants at large, but such only as are capable of being portreeves. It does not appear, that any evidence was produced on behalf of the petitioners; but after a witness had been examined, and some court rolls read on behalf of the sitting mem-

32. Journ.
P. 749.

bers, the committee resolved, and the House agreed, (a) that "the prince's tenants, capable of being portreeves of the borough of Fowey, "are such tenants only as have been duly admitted upon the court rolls of the manor, and "have done their fealty." And the sitting members kept their seats.

At p. 344, after the word *punished*, in the last line but one, add,

An information was accordingly filed against Billingham, which is still preserved in the treasury of the king's bench. The defendant pleaded not guilty, but it appears, that the prosecution was afterwards abandoned, and the defendant acquitted for want of prosecution. The material parts of the information, which may be considered as an early instance of a prosecution at the common law for splitting of votes, or bribing, in order to carry on an election, run thus:—*Surry memorand' qd. Sam' Astrey arm', coron', & attorn' dni. regis in cur' ipsius regis, coram ipso rege, qui pro eodem dno rege in hac parte sequitur, in propr' prsona sua ven' hic, in cur' dci dni regis coram ipso rege apud Westm', die Lunæ prox' post tres sept' Sci Michal' isto eodem termino, et pro eodem dno rege, dat cur' hic intelligi, et informari, qd. villa, et*

(a) The entry in the Journal at first sight admits of a doubt, whether the House agreed to this resolution.

burgus de Haslemere, in com' Surr', est antiqua villa et burgus; qdq' liberi tenentes messuag', sive terrar' infra burg' predict' jacen', pro tempore existen', duos burgens' ejusdm' burgi ad quodlibet parliament' dni regis nunc, & progenitor' suor' regum et reginarum Angl' veniend', et ibm. pro burg. pd. deserviend' antiquius eliger', et de jure eligere debuer', & consuever', & hujusmodi duos burgens' ad veniend', et pro burgo pd. deserviend' in quolibet parlamento eligere adhuc debent. It then states, that on the 24th July, 31 Car. II. a writ, bearing date the 24th July, in that year, issued, and then reciting the writ of summons, goes on, qdq' postea, & ante pdcum 17 diem Octo', anno supradco, (the day mentioned in the writ for the meeting of the parliament) virtute warrant' super brev' pd. electio' duor' burgens' ad deserviend' in parliament' pd. pro burgo pd', per liberos tenentes, Anglice, freeholders, messuagior', et terrar' pd', infra burg' pd. jacen', existen' residen' infra eundm' burgum fuit faciend'. Quod quidm' Johannes Billingham sen', de Haslemere pd', in com' Surr' pd', yeoman, de premissis pd. satis sciens, sed existen' persona prave mentis, & impie conversationis, & machinans, practicans, malitiose intendens, pacem, et communem tranquillitatem hujus regni Angliæ perturbare, ac disturbare, ac pervertere, corrumpere & destruere bonos leges, consuetudin', et gubernation' hujus regni Angliæ, necnon debitas, et legitimas electiones

burgens' ad deservieud' in parliament' bujus regni Angliæ, verum etiam reddere et facere parliament' bujus regni Angliæ contemptuosa, corrupta, et minime idonea ad deservieud' dco dno regi ad hæc maxima fines et proposita, pro quibus sunt constitut', summonit', et convocat', Et ad nequissimas machinationes, practicationes, et intention' suas pd. perimplend', et persciend', ipse pd. I. B. ad inducend', et causand' personas habere voces in electione burgens' pro burgo pd. ad servieud' in parliament' pd. sic ut prefertur summonit', quia de jure tales voces habere non debent, Et perinde subvertere' debet election', Et detollere al' personas infra burg' pred' existen' voces suas in eligend' ipsius de jure pertinen', postea, scilicet, 30 die Augusti, anno regni dni Car' sci, nunc regis Angliæ Et c. 31 supradco, apud Haslemere in com' Surry pd', vi Et armis, Et illicite, injuste, astute, subtilit', fls', fraudulent', et deceptiva conveyavit, Et conveyare causavit Et procuravit quandam parvam partem cujusdam messuagii, sive tenementi, infra burg' pd. existen', cuidam Johanni Billinghurst jun', filio pd. I. B., Et heredibus suis, Et quibusdam Rogero Jackson, et Will. Jackson Et heredibus suis unum partem messuagii, sive tenement' infra burgu' pd. jacen', Et divers' al' parcell' aliorum messuagior', terrarum, sive hereditament', infra burg' pd. jacen', diversis aliis personis prefat' coron', Et attorn' adhuc incognit', ea intentione, qd. ipsi pd. I. B. jun', R. I., Et W. I., Et pd. al' person' ignot', quæ præantea null' habentes, nec eorum aliquis habens liberum tenementum infra burg' pd', nec habilitat habere,

habere, vel dare vocem in electione pd. de burgens' pd. ad deservierend' in parliament' pd., sicut prefertur summonit', colore, et pretextu pd., fraudulententer conveiant, voces suas darent in electione pd., sed nullum aliud haberent proficuum, vel beneficium stat', sicut prefertur, illis conveiat, sed ipse idem I. B. sen. et non ceteræ personæ, quibus ad procuracion' suam sic conveiaffet tam possession' quam tot proficuum status predict' haberet, & custodiret. Et predict' coron' & attorn' dicti domini regis ulterius dicit, quod predict' Johannes Billingham sen. in ulteriori prosecutione predict' malevolar' intention' suar' predict', postea, scilicet, predicto tricesimo die Augusti, anno regni dicti domini regis nunc tricesimo primo supradict', apud Haslemere predict', in dicto com' Surr', vi & armis &c. illicite, injuste, astute, subtiliter, falso, fraudulententer, corrupte, & deceptivè, divers' denarior' summas divers' personis pauperibus, & indigentibus, sed burgensibus, & liberis tenentibus messuagiorum, sive terrarum infra burgum predict' jacen', & infra burgum predict' tunc residen', & vocem in electione predict' sic fiend' habentes, ad tales personas subornand', & dand' voces suas ad disposition' predict' Johannis Billingham sen. vel pro tal' person', qual' ipse predict' Johannes Billingham prescriberet, vel appunctuaret ipsis eligi pro burgensibus ad deservierend' pro burgo predicto in parlamento dedit, solvit, et deliberavit, videlicet, cuid' m' Johanni Carter, de Haslemere predict' in com' predict', laborer, adtunc existen' libero

libero tenenti & residenti infra burgum predict' & vocem habentem ibidem, summam quinq' librarum legalis monete Anglie; cuidam Johanni Smyth, als Beazer, tunc alteri burgens', & libero tenenti, & resident' infra burgum de Haslemere predict', & vocem ibidem habent', summam viginti solidor' consimilis monete Anglie; cuidam Johanni Bredall, als Blaze, tunc alteri burgens', & libero tenenti infra burgum predict', & vocem ibidem habent', summam trigint' solidor' consimilis monete Anglie; & diversis, aliis burgensibus, & liberis tenentibus infra burgum predict', & vocem ibidem habentibus, sed prefat' coron' & attorn' adhuc ignot', diversas al' denarior' summas in subversion' legum, & statutorum, & magnum dedecus parliamentor' hujus regni Anglie, & perversion' & destruction' juris, & privilegi election' ceteris burgensibus burgi predict' spectant', in magnam inquietud', & expens' diversor' ligeor' dicti domini regis, ad magn' dishonor', & vilipendium hujus regni Anglie, in malum & perniciosum exemplum omnium aliorum in tali casu delinquent', ac contra pacem dict' domini regis nunc, coronam, & dignitatem suam.

3. Burr. -
P. 1335.

This information having been filed, is a pretty strong proof, that the arguments of counsel in the cases of the King and Pitt, and the King and Mead, that the court "had no jurisdiction at "common law to punish bribery at elections to "parliament," were ill founded, and that Lord Mansfield was well justified in saying for himself

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and the other judges, that "bribery at elections
"for members of parliament must undoubtedly
"have been a crime at common law, and con-
"sequently punishable by indictment or infor-
"mation."

But this information against Billingham is still
more important, inasmuch as it shews that the
fraudulent splitting of tenements to make votes
at elections, was an offence punishable at the
common law, and the statute of 7 and 8 W. III.
was made only in affirmance of it.

That the remedies provided by the common
law for infractions of the freedom of election
have been seldom resorted to, may be owing to
a general dread of provoking the displeasure of
the House of Commons, by appealing to any
other judicature upon the subject of elections.
Upon this point it seems to have been uniformly
jealous, and the case of Ashby and White (in
1703) made an impression upon the public
mind, which is hardly yet worn out. The checks
given to fraudulent practices by the House, were
so weak in themselves, and so capriciously and
partially applied, that they served rather to in-
crease the evil, and at length statutes were made,
tending more to secure individuals from the
danger of offending against the privileges of the
House, when they sought redress in the ordi-
nary courts of justice, than to alter the ancient
provisions of the common law.

In

In *The Digest of the Law respecting County Elections*, at p. 172, after line 26, add

The Bedford committee, in 1774, resolved, "that they would not reject any person's vote" (not otherwise disqualified) for receiving alms, "provided he had not received the said alms" within the year." 2 Dougl. p. 123.



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F I N I S.



ERRATA.

- Page 15, last line—*forelerici*, read *clerici*.
— 18, line 8—for *f. 21*, read *f. 1*.
— 25, — 4—for *Madon*, read *Madox*.
— 58, — 19—for *In*, read *1 Dec.*
— 62, — 3—after *rule*, insert *had*.
— 81, — 8—for 21, read 1.
— 85, — 12, 13—for *in the ninth year of the reign of Queen Ann*, read, *by the statute of the 9 Ann, c. 20 f. 8*.
— 125, — 10—after *Milborne Port*, read, (*in 1747.*)
— 137, — 17—for *election*, read *elections*.
— — — 18—for *is*, read *are*.
— — — 20—for *him*, read *each*.
— 173, last line—for *was*, read *were*.
— 206, line 19—after 52, insert *f. 25*.
— 309, — 14—for *mortgagee*, read *mortgagor*.
— 378, — 16—for *to be in*, read *that*.
— — — 18—for *and*, read *are*.